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## Senate

The Senate met at 10 a.m. and was called to order by the Honorable BRIAN SCHATZ, a Senator from the State of Hawaii.

### PRAYER

The PRESIDING OFFICER. Today's opening prayer will be offered by Rev. Kris Holzmeyer, campus pastor of Northwoods Baptist Church in Newburgh, IN.

The guest Chaplain offered the following prayer:

Let us pray.

Omnipotent Heavenly Father, we come to You this day in a spirit of worship. You are sovereign in all things and active in the affairs of men.

We are grateful for the blessings of freedom and prosperity You have bestowed upon our country and its citizens. We acknowledge that You and You alone are the provider of those blessings.

Lord, we ask for Your forgiveness for the many sins that plague our Nation. We ask for Your divine intervention as we move forward seeking to bring You glory and honor as a people. Today, men and women will gather in this room to make decisions on behalf of the American people. All of them have left family, friends, and occupations to serve a greater cause. Will You bless them, Lord? Will You shower them with Your favor? Help them to be unified, seeking Your will first and making Your motives their own. May the decisions they reach today serve our people well but, most importantly, may they be pleasing unto You.

In the name of Jesus Christ our Lord we pray. Amen.

### PLEDGE OF ALLEGIANCE

The Presiding Officer led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. LEAHY).

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, July 11, 2013.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable BRIAN SCHATZ, a Senator from the State of Hawaii, to perform the duties of the Chair.

PATRICK J. LEAHY,  
President pro tempore.

Mr. SCHATZ thereupon assumed the chair as Acting President pro tempore.

### RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

### KEEP STUDENT LOANS AFFORDABLE ACT OF 2013—MOTION TO PROCEED

Mr. REID. I move to proceed to Calendar No. 124, S. 1238, Senator REED's student loan bill.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1238) to amend the Higher Education Act of 1965 to extend the current reduced interest rate for undergraduate Federal Direct Stafford Loans for 1 year, to modify required distribution rules for pension plans, and for other purposes.

#### SCHEDULE

Mr. REID. Following my remarks and those of the Republican leader, the time until 12:30 today will be equally divided and controlled, with the Republicans controlling the first 30 minutes and the majority controlling the next 30 minutes.

The Senate will recess from 12:30 to 2:15 for caucus meetings.

#### SENATE RULES

Last month, the Republican leader spent a great deal of time talking about the importance of keeping one's word.

I agree without any question that Senators and everyone else should keep their word. I also believe a deal is a deal, a contract is a contract, an arrangement is an arrangement, a bargain is a bargain. As long as each party to such agreement holds up his end of the bargain, Senators should stick to their word.

But agreement is a two-way street. If one party fails to uphold their end, the agreement, of course, is null and void. The Republican leader wants everyone to believe—he has made many statements on the floor to which I have not responded—that I have broken my word. He neglects to recall his own commitments and his own words. Remember, an agreement is a two-way street.

Let's take a closer look at what the Republican leader committed to do. Let's look at the agreement we entered into together on the floor of this body, the Senate.

In a colloquy at the beginning of this Congress, January 24 of this year, I committed not to amend the Standing Rules of the Senate except through regular order. During that colloquy, Senator MCCONNELL also made a commitment. Senator MCCONNELL committed to end the constant Republican obstruction and return the Senate to a time when nominations were processed more efficiently.

This is what he said:

On the subject of nominations, Senate Republicans will continue to work with the majority to process nominations, consistent with the norms and traditions of the Senate.

I replied on the Senate floor:

The two leaders will continue to work together to schedule votes on nominees in a timely manner by unanimous consent, except in extraordinary circumstances.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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Remember, an agreement is an agreement, a contract is a contract, and a bargain is a bargain.

The Republican leader also pledged: This Congress should be more bipartisan than the last Congress. He promised "to work with the majority to process nominations." He committed that "the two leaders will continue to work together to schedule votes on nominees in a timely manner by unanimous consent, except in extraordinary circumstances."

Those were his words. Those were his commitments. Those were his promises. By any objective standard, they have been broken.

Let's take a look at the record—part of the record at least. Exactly 3 weeks after Senator MCCONNELL committed to process nominees consistent with norms and traditions of the Senate—I repeat, consistent with the norms and traditions of the Senate—he led the Republicans on an unprecedented filibuster of the Secretary of Defense, a highly qualified nominee, someone with whom we served in this body.

Nothing can be a starker violation of the commitment to a return to the norms and traditions of the Senate than launching a filibuster of the Secretary of Defense, the first ever in the history of our Republic. What is more, Republicans obstructed the nominee because of completely unrelated issues and despite the fact that nominee Chuck Hagel was a war hero of the Vietnam conflict and a former Republican Senator from Nebraska. Republicans were busy catering to the tea party by trying to inflate the Benghazi nonscandal, which was completely unrelated to Secretary Hagel. He wasn't there.

Secretary Hagel's nomination was pending in the Senate for 34 days, a record for the Secretary of Defense. The average time is about 10 days.

Confirmation of Cabinet Secretaries used to be free from obstruction. Once in a while there would be something, but not very often. But under President Obama, Cabinet nominees have faced unprecedented obstruction and significant delays in assuming their positions.

Not a single Cabinet nominee was filibustered in President Carter's administration. Not a single Cabinet Secretary nominee was filibustered in President George H. W. Bush's administration. One Cabinet Secretary was filibustered in the Reagan administration, and only one Cabinet Secretary was filibustered in President George W. Bush's administration. But already, in the Obama administration, four Cabinet Secretaries have been filibustered and more filibusters are likely. Remember, he still has 3½ years to go in his term of office. Yet the Republican leader says there is no problem; the status quo is fine.

Republicans were willing to risk national security for the sake of tea party politics when considering the Hagel nomination, and they were will-

ing to risk it again when considering the nomination of John Brennan to lead the CIA, the Central Intelligence Agency. Now we have the Secretary of Defense, and we have the CIA Director. They filibustered the nomination of a man charged with leading one of the Nation's most vital national security agencies. Yet the Republican leader says there is no problem; the status quo is fine.

In fact, Republican obstructionism has affected nearly every single one of President Obama's nominees. These obstructions continued at every level and through creative new methods.

Even before President Obama's nominations reached the Senate floor, Senate Republicans bogged them down with unreasonable demands, which are terribly time consuming. They are designed to be, if not unattainable, hard and difficult.

Tom Perez is a man who worked as a garbage man, who put himself through school. He hauled garbage. He is the President's nominee for Secretary of Labor. He received, after the public hearing, more than 200 questions for the record. These are not easy questions. They are not single-line questions.

Jack Lew, the President's nominee for Secretary of Treasury, was asked more than 700 questions before he was confirmed. Previously, Secretaries of the Treasury were just whipped through here with only a handful of questions. Now Jack Lew is being held up again for another position he wants with the International Monetary Fund. He is the Secretary of Treasury of our Nation.

Gina McCarthy—after a full hearing which took quite a while to get arranged because the chairman of the committee wanted to make sure the ranking member was satisfied with the time, witnesses, and all of that—was asked to lead the Environmental Protection Agency.

I know quite a bit about that committee. I was chairman of that committee twice. Now this is a World Series deal. This holds the record. She had more than 1,100 questions. It used to be common for nominees to be asked a handful of questions in writing after the hearing took place.

My colleague in the minority wants to claim credit for letting some nominees proceed. The fact that he seeks credit for approving some nominees only highlights the extent of the problem. Confirming nominees should be the norm, not the exception.

Remember the agreement he and I talked about on the Senate floor. The President deserves to have his or her team in place. I don't really care who is elected, whether it is Jeb Bush, Hillary Clinton, or JOE BIDEN. That person shouldn't have to go through what we have gone through in the last 4½ years. One look at the Senate's Executive Calendar shows that fundamentally nothing has changed since Senator MCCONNELL and I entered into our supposed agreement.

There are currently 15 executive branch nominees ready to be confirmed by the Senate after long stalling in many different ways. They have been waiting more than 260 days. Add it up, and that is about 9 months per confirmation.

At this point in President Bush's second term, the Senate had confirmed three times as many executives as for President Obama. By the Fourth of July of President Clinton's second term, the Senate had confirmed 80 of his executive nominees. By the Fourth of July of President Bush's second term, the Senate had confirmed 118. By the Fourth of July of this year for President Obama, 34. Remember, he has 3½ years left.

Through June of this year I have been forced to file cloture on 25 Obama executive nominees—25. This is eating up so much time. By comparison, a cloture was rarely filed during the 8 years Bush was President.

These procedural blockades are as obvious as they are unprecedented. Yet the Republican leader says there is no problem here; the status quo is fine.

This leads me to wonder what exactly does my friend—and he is my friend—Senator MCCONNELL consider an extraordinary circumstance? Is it an extraordinary circumstance when Republicans merely dislike an otherwise qualified nominee? Is it an extraordinary circumstance when Republicans simply dislike the agency the nominee will lead, 1,100 questions? Is it an extraordinary circumstance when Republicans dislike the very laws a nominee will be bound to uphold?

It is a disturbing trend when Republicans are willing to block executive branch nominees even if they have no objection about the qualification of the nominee.

They don't like the law. They don't like the agency. Instead, they are blocking qualified nominees to circumvent the legislative process, forcing wholesale changes to laws or restructure of the entire executive branch departments. They are blocking qualified nominees because they refuse to accept the law of the land.

A perfect example is Richard Cordray, former attorney general of the State of Ohio, who has been asked by President Obama to lead the Consumer Finance Protection Bureau. To give a little background, remember, this was part of the bill that was passed called Dodd-Frank. This consumer finance protection bill was the brainchild of ELIZABETH WARREN, who is now a Senator representing Massachusetts.

The reason she is in the Senate is not by chance. Don't even put her there; the President for a long time wanted her to be there. No, he can't have her, so Cordray was a replacement. He was nominated in July of 2011. It is now July 2013.

There is no doubt about his ability to do the job. He has won high praise from both Democrats and Republicans. He

has a stellar track record. If Mr. Cordray received a fair up-or-down vote, he would be confirmed immediately. But the Consumer Financial Protection Bureau continues to operate without a leader because Republicans want to roll back a law that protects consumers from the greed of the big Wall Street banks that caused us to have the meltdown we had in the first place. Republicans refuse to confirm Richard Cordray's nomination because they refuse to accept the law of the land. They do not dislike him, they dislike the law that was passed. Yet the Republican leader says there is no problem here; the status quo is fine.

This same type of blatant obstruction was applied to the nomination of Gina McCarthy to lead the Environmental Protection Agency. This is a woman who has wide-ranging support with Republicans. She served in State Republican administrations. She was nominated 130 days ago, or thereabouts, and although she has a proven track record of public service that will help her bring environmental and business groups together to tackle the serious environmental challenges facing our Nation, her nomination drags on. It just lingers. Why? Because Republicans fundamentally oppose the mission of the agency—the EPA—she will lead to keep the air we breathe and the water we drink safe from dangerous pollution. Once again, they refuse to accept the law of the land. Yet the Republican leader says there is no problem here; the status quo is just fine; nothing is wrong with the Senate and how it works.

Republicans also made clear from the start they would never confirm Donald Berwick to lead the Centers for Medicare and Medicaid Services, the agency tasked with implementing the landmark health care reform legislation. Talk about qualifications. This was a Harvard professor of medicine.

This health care law is already saving seniors money in checkups and prescriptions. Millions of seniors now have wellness checkups. Being a woman can no longer be considered a preexisting disability, as insurance companies did before. They can't do that now. Because of health care reform, insurance companies can no longer deny coverage to sick children, such as those kids I had in my office yesterday, who had juvenile diabetes. Because of health care reform, there can be no more lifetime caps. A man who was a race car driver in Nevada got in an accident—not racing, an accident in a car—and was paralyzed. He got to the \$100,000 limit and was all through; no more help from the insurance company. He went on welfare. Because of the health care reform law insurance companies can no longer discriminate against those, as I have indicated, with preexisting conditions.

Since President Obama signed that law, insurance companies can no longer put profits ahead of people. It used to be there was no limit to what they could spend on the executives of the

company, but now they are limited to 20 percent. That is why millions of people this year have gotten refunds, because the insurance company was gouging them. Republicans oppose this health care law. In the House they have scheduled another vote next week—to vote for I think the 41st time—to repeal it. Because Republicans oppose the health care law, they have done everything in their power to derail the law's implementation, including denying the CMS a leader.

Despite Dr. Berwick's stellar credentials, Republicans defamed him and destroyed his chance at confirmation because they refused to accept the law of the land. They refused to confirm Berwick, so in 2010 President Obama was forced to recess-appoint him. Berwick's term ended a year and a half later because that was done under a recess appointment, and at the end of that Congress the appointment expired. He was never confirmed to lead the CMS, although his nomination was pending for 593 days—more than a year and a half. Yet the Republican leader says there is no problem here; the status quo is just fine.

The same type of politically motivated obstruction has hobbled the National Labor Relations Board. This isn't some brand new law that Democrats came up with. This came into being during the Great Depression—not this one, but the one in the 1930s. That is when the National Labor Relations Board originated. From January 2008 to March 2010, the National Labor Relations Board has operated with just two members. Senate Republicans have refused to allow a vote on the President's nominees—refused.

In June 2010, the Supreme Court invalidated much of the NLRB's work during this period, finding three members were necessary. There was no quorum unless you had an extra one, and we didn't have one because they wouldn't let us do it. Then the President recess-appointed a bipartisan group of three members to the board so it would function. The appeals court ruled those appointments were also unconstitutional. The case will soon go to the Supreme Court about recess appointments.

As I mentioned, I had a meeting earlier with some of my Republican friends here this morning. We met in my office, and I reminded everybody when this issue came up in the past, we put people on that DC Circuit that we had to gag to vote for in an effort to avoid a problem here in the Senate, but we did. These are three we put on, the one who gave us this outrageous opinion that after 230 years as a country no longer could we have recess appointments. So it will go to the Supreme Court.

In the meantime, the term of one of the three remaining NLRB members expires next month. So at the end of August the NLRB will continue to be nonfunctioning. Republicans consider that a victory. I am not making this

up. Listen: In 2011, the senior Senator from South Carolina—and I care a great deal about this man, LINDSEY GRAHAM. He would say he is my friend and I am saying he is my friend, but listen to what he said: "The NLRB, as inoperable, could be considered progress." "The NLRB, as inoperable, could be considered progress."

Because Republicans refuse to accept the law of the land, they have denied the NLRB the ability to safeguard workers' rights and monitor unions. Workers have been illegally terminated. They have no way to appeal. The results of contested union elections? It doesn't matter; nobody is there to look it over. Labor abuse and unfair labor practices go unchallenged. Yet the Republican leader says there is no problem here; the status quo is just fine.

The Constitution gives the President, whomever that President might be, the right, the power to choose his team. It grants the Senate the right to advise and consent on those choices. But consistent and unprecedented obstruction by this Republican caucus has turned advise and consent into deny and obstruct. Republican obstruction has denied President Obama the ability to choose his team. Whether you are a Democrat, a Republican, or an Independent, we should all be able to agree that Presidents deserve the team members they want, and their nominations should be subject to simple up-or-down votes.

No President can safeguard America's national economic security to the best of his or her ability without their chosen team in place. Let's see if we can come up with an example. Davey Johnson is the manager of the Washington Nationals—his team—we are so happy to have here in Washington. He is here as manager of that team to field a winning team. He was a starring second baseman for the Baltimore Orioles when they won four American League pennants, two World Series championships, and he has managed five different baseball teams. He has been a two-time manager of the year, he led the Mets to their 1986 World Series as a manager, and last year he gave the Nats franchise their first division title since 1981.

Major League Baseball season begins about April 1. Imagine the front office of Major League Baseball calling up Davey Johnson around the 1st of April and saying: Davey, I know that first baseman you signed a week or so ago, Adam LaRoche, is a good first baseman. He is swell—a Gold Glove winner, a classic power hitter—but I am sorry to tell you that you can't play him until maybe the middle of June. Then Davey Johnson is called again by the same man who says: That third baseman, Ryan Zimmerman, I know you like him, he is a man who has won the Silver Slugger Award, he has been a Gold Glove recipient, an All Star, but tell you what, you can play him as soon as the All Star break is over.

If that were to happen, what would happen to that team? They would go on and perform, just as President Obama has done, but they would not play to their ability. And that is ridiculous. Yet that is where we are. That is exactly what Republicans are saying to President Obama: You can't have your team until we tell you everything is fine, and it is going to take a long time for us to tell you that. The gridlock the Republicans have created is not only bad for President Obama and bad for the Senate, it is bad for this country. We can have people come and give all the statistics in the world, but is there anybody out there in America who thinks this body is functioning well?

Upon examination of this record I have outlined of obstruction—of delay and filibuster—it can hardly be said Senator MCCONNELL has—to use his words—worked together to follow regular order and use his procedural options with discretion. It can hardly be said Senator MCCONNELL has worked with the majority to move nominations. It can hardly be said Senator MCCONNELL has worked with the majority to schedule votes on nominees in a timely manner except in extraordinary circumstances. But it could be said Senator MCCONNELL broke his word. That certainly could be said. The Republican leader has failed to live up to his commitments. He has failed to do what he said he would do—move nominations by regular order except in extraordinary circumstances. I refuse to unilaterally surrender my right to respond to this breach of faith. If Senator MCCONNELL wants to continue to defend the status quo of gridlock in Washington, he has that right. If Senator MCCONNELL wants to continue to believe there is no problem in the Senate, that is his choice. But the American people are fed up with gridlock, they are fed up with obstruction, and they are fed up with politics as usual. They want Washington to work again for American families.

I try every day of my life to be on the side of the American people. I wait and I wait, but I am not going to wait another month, another few weeks, another year for Congress to take action on the things we have been doing for almost 240 years.

#### RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, I sat here patiently and listened to the majority leader's speech, and I hope he will do me the courtesy to listen to mine, since this is a very important day in the history of the Senate. I want to make a couple of observations, which I hope my friend the majority leader will listen to.

First, he is trying to justify in advance what would be a very clear fail-

ure to honor his very clear commitment not to break the rules of the Senate. What he is referring to are his own statements, not mine, regarding extraordinary circumstances. He said that, not me. In other words, to justify breaking his clear commitments not to break the rules of the Senate in order to change the rules of the Senate, he is attributing to me something somebody else said, and that somebody else, by the way, is him. He is attributing to me something he said.

We need to keep our commitments around here and not break them, and we need to be honest about quoting people around here. This is about trying to come up with excuses to break our commitments. What this is about is manufacturing a pretext for a power grab.

I listened very carefully to what the majority leader had to say. What he is saying, in effect, is he doesn't want to have any controversy at all attached to any of the nominees. In other words, don't ask any questions. Advise and consent means sit down and shut up.

He was complaining about the number of questions the nominee for EPA Administrator was required to answer.

What he conveniently left out was the chairwoman Senator BOXER requested 70,000 documents. Why is it OK for the chairwoman to request 70,000 documents and somehow if the ranking member makes a lot of requests it is some violation of some comity? When the Founders wrote "advise and consent," I don't think they had in mind sit down and shut up.

It is noteworthy that all of the people he is complaining about got confirmed. So what he is saying is he doesn't want any debate at all in connection with Presidential appointments, just sit down, shut up, and rubberstamp everything, everyone the President sends up here.

On the calendar right now there are 21 nominations—21. There are 148 in committee. We don't control the committees, he does: 148 in committee, 21 on the calendar. It is pretty obvious Senate Democrats are gearing up today to make one of the most consequential changes to the Senate in the history of our Nation.

I want everybody to understand, this is no small matter we are talking about. I guarantee you it is a decision that if they actually go through with it, they will live to regret. It is an open secret at this point that big labor and others on the left are putting a lot of pressure on the majority leader to change the rules of the Senate and to do so, as he promised not to do, by breaking the rules of the Senate. That would violate every protection of the minority rights that has defined the Senate for as long as anyone can remember.

Let me assure you, this Pandora's box, once opened, will be utilized again and again by future majorities and it will make the meaningful consensus-building that has served our Nation so well a relic of the past.

The short-term issue that has triggered this dangerous and far-reaching proposal is simple enough. The hard left is so convinced that every one of the President's nominees should sail through the confirmation process that they are willing to do permanent irreversible damage to this institution in order to get their way, and it appears as if they have convinced the majority leader to do their bidding and hijack the Senate. They are not interested in checks and balances. They are not interested in advise and consent. They are not even interested in what this would mean down the road when Republicans are the ones making the nominations. They want the power and they want it now. They do not care about the consequences. The ends justify the means ethos has been resisted by basically every Senate leader in the past and it is a clear and unequivocal violation of the public assurances that the current majority leader made to the entire Senate, his constituents, and the American people just a few months ago.

What is worse is we got to this point on the basis of an absolute fairytale, a fairytale. Obviously, the left needed an excuse to justify such an unprecedented power grab, so they simply made up a story about Republicans blocking the President's nominees. The majority leader is entitled to his opinion, but he is not entitled to his facts. The facts are the facts. Here is the real story. Almost nothing about this tale so often repeated around here holds up to scrutiny.

The facts are that this President took office and the Senate has confirmed 1,560 people. The Senate has confirmed every single one of the Cabinet nominees who has been brought up for a vote—every single one. The President has gotten nearly three times as many judges confirmed at this point as President Bush in his Presidency.

Here is the point. What this whole so-called crisis boils down to are three nominees the President unlawfully appointed—as confirmed by the courts. A Federal court has held the three nominees were unlawfully appointed. Two of the three are direct parties to the litigation and the third one was appointed at exactly the same moment in the exact same way. One of these nominees has been held up by inaction over at the White House related to structural reforms that the administration and even the nominee himself, Mr. Cordray, now say they are willing to work with us on. The fact is, indisputably, we have been confirming lawfully nominated folks routinely and consistently: The Energy Secretary, 97 to 0; the Secretary of the Interior, 87 to 11; the Secretary of the Treasury, 71 to 26; the Secretary of State, 94 to 3, just a few days after the Senate got his nomination; the Secretary of Commerce, 97 to 1; the Secretary of Transportation, 100 to 0; the Director of the Office of Management and Budget, 96 to 0; the Administrator of the Centers for Medicare

and Medicaid Services, 91 to 7; the Chair of the Securities and Exchange Commission, on a voice vote—in other words, unanimously.

What about the nominees still awaiting confirmation who have not—*not* been unlawfully appointed? The Senate is ready to vote on them too. Regrettably, in my view, frankly, all of them appear ready to have the votes to be confirmed. I don't necessarily support them, but they have the votes to be confirmed. Why don't they call them up? The majority leader determines what the order of business is around here. He could have scheduled votes if that is what he wanted to happen. Why don't we have a vote on the Secretary of Labor? What about the Administrator of EPA? The NLRB nominees who were not unlawfully appointed—there are some other NLRB nominees who were not unlawfully appointed—why aren't we voting on them?

As I said, pending the expected negotiations on reforms to the CFPB, the Senate would likely confirm the chairman to that position as well.

We need to be honest about what is going on around here. The only crisis is the crisis the Democrats are creating with their threats to fundamentally change the Senate, something the majority leader said just a few years ago he would never even consider. Here is why he said that: Because going down this road is “ultimately . . . about removing the last check in Washington against a complete abuse of power.”

Those are the words the majority leader himself used in describing the very thing he is now threatening to do—the very thing he is now threatening to do.

Let me sum up what is going on around here. Senate Democrats are getting ready to do permanent damage to this body to confirm three unconstitutionally appointed nominees by a simple majority vote. They are willing to break the rules of the Senate to change the rules of the Senate in order to confirm three nominees that the Federal courts have said were unlawfully appointed. Every other nomination we are talking about has either already been confirmed or is on the way to being confirmed, but they will not call them up. He gets to decide when we vote. Where are the callups for EPA and Labor and the three NLRB nominees lawfully appointed?

If this is not a power grab, I don't know what a power grab looks like. The President appoints three people unconstitutionally, the second highest court in the land confirms they were unlawfully appointed, and Senate Democrats want to break the rules of the Senate to confirm them. This is not the story we just heard from the majority leader, but this is a fact.

The entire phony crisis—absolutely phony, manufactured crisis—boils down to three unlawfully appointed nominees. The Democrats say we are holding up the others. It is not true. He gets to schedule the votes. Where are

they? Bring them up. The truth is, if there is anyone to blame for holding up things in the Senate it is the Democratic majority. They are the ones blocking nearly 30 fast-track nominations, many of whom Republicans have already agreed to confirm unanimously. They are the ones, the Democrats, who have yet to schedule votes on McCarthy and Perez, despite the fact that both of these highly controversial nominees already have enough votes to clear the 60-vote hurdle.

I do not like the facts, frankly, and I am not going to be voting for either of these nominees. Tom Perez in particular is a far left ideologue whose record of bending the rules to achieve his ends is deeply concerning to me and just one of the reasons I plan to vote against him. But to pretend the power to confirm these folks lies in the hands of anyone but the majority leader is totally disingenuous.

The White House knows what I have just said. I have told them. The majority leader would know it too if he spent a little more time working with his colleagues in a collegial way and a little less time trying to undermine and marginalize people.

The real reason, as I said, is that the far left and big labor are leaning hard on Democrats to go nuclear. Go nuclear—they love the sound. The majority leader is about to sacrifice his reputation and this institution to go along with it because what they truly want is for the Senate to ratify the President's unconstitutional decision to illegally appoint nominees to the NLRB and the CFPB without the input of the Senate. They know they cannot get that done under current rules. They know time is not on their side. The second highest court in the land ruled unanimously that President Obama had no power to do what he did. Another court has since concurred. Now the Supreme Court is set to hear the case in just a few months. They obviously thought it was important enough to be dealt with at the highest Court in the land.

This is not a fight over nominees at all. It is a fight over these illegal, unconstitutionally appointed nominees. It is laughable to think Democrats would ever agree to such a thing if we were talking about a Republican President's unlawful nominees—laughable.

It is equally irrational to think we would go along with this. In fact, no Senator, regardless of party, should ever consider ceding our constitutional duties in such a way.

I advised the Romney team before the election that if he won and I was ever elected majority leader, I would defend the Senate first in these battles. I would defend this institution against a Republican President trying to abuse it. That is a precedent set by majority leaders, such as Robert Byrd, who revered this institution because they knew what it was to be in both the majority and the minority. It is what the best leaders of the Senate have always

done. It is absolutely tragic to think these days may be over.

Here are the battle lines. On one side are people who think the President should have the power to unconstitutionally ignore Congress and their constituents. Those are people who believe in it so firmly that they are willing to irreparably damage the Senate to ensure they get their way. They are willing to do something the majority leader himself said would contribute to the ruination of the country. I am not making up his quotes; that is what he said.

On the other side are the folks in my conference, and even some Democrats, with the courage to speak up against this power grab. We are the folks who believe deeply that a President of any party should work within the bounds of the Constitution, and that Senators of both parties should fulfill their own constitutional obligations to thoroughly vet nominees. We also believe in giving those nominees a fair hearing. If you look at the facts, you will see we have already been doing that.

As Senator ALEXANDER noted, no majority leader wants written on his tombstone that he presided over the end of the Senate. Well, if this majority leader caves to the fringes and lets this happen, I am afraid that is exactly what they will write. In the majority leader's own words: Breaking the rules to change the rules is un-American. Those are his words, not mine.

I hope the majority leader thinks about his legacy, the future of his party and, most importantly, the future of our country before he acts.

I yield the floor.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. Mr. President, I assume the words “I agree” are words that mean something. We had a colloquy on the floor, and at that time he said he wouldn't do anything extraordinarily—he said that, and I said I agree.

I would like to talk about a few other things. Here is a direct quote Senator MITCH MCCONNELL of Kentucky said a few years ago: The Senate has repeatedly adjusted its rules as circumstances dictate. The first Senate adopted its rules by a majority vote which specifically provided a means to end debate instantly by a simple majority vote.

This was the first Senate at the beginning of our country, and that was so we would have the ability to move the previous question and end debate. This is not the first time a minority of Senators has upset a Senate tradition or practice. The current Senate majority intends to do what the majority of the Senate has often done: Use its constitutional authority under Article I, Section 5 to reform Senate procedure by a simple majority vote. That is what Senator MCCONNELL said.

The interesting thing here is my friend talks as if: Gee, this has never been done before. But the fact is it has been done many times. Since 1977, it

has been done 18 times—about twice every year. I think that is pretty interesting. It has happened 18 times just since 1977: December 12, 1979; November 9, 1979; March 5, 1980; June 11, 1980; June 10, 1980; another time in 1980; 1986, 1985, 1987, 1995, 1996, 1999, 2000, 2011. Those are the times the rules have been changed, overruling precedence—as my friend Senator McCONNELL said—with a majority vote.

It is also important to note that, without getting into a lot of legal jargon, the Constitution gives the nomination power to the President. The Constitution does not provide for a supermajority of the Senate to provide its advice and consent. The Drafters of the Constitution knew how to provide for supermajorities when they wanted to. The very same clause in the Constitution that gives the President the appointment power—the clause from which I just quoted—also provides for consortium of treaties, which is two-thirds. Same paragraph. Legislation and other things require a simple majority.

My friend the Republican leader has made my point. He talks about all the votes—97-0, 100-0, 98-0. That is the whole point. It takes months and months and sometimes years to get to where we can vote. They stall everything they can, and they have done that. That is the whole point. It was supposed to only be under extraordinary circumstances, and I went into some detail to explain that. Is this extraordinary circumstances? Of course not.

He talks about Richard Cordray and how they just want a little tweak in the law. Here is the tweak in the law they wanted: Dodd-Frank knew we would have trouble with the appropriations process because the Republicans don't let us do much appropriating at all. So in the wisdom of the people who drafted Dodd-Frank, they said: We are going to make sure the position that Cordray is talking about always has the resources to do what they want to do. So they did something unique and said the money will come from the Federal Reserve. The little tweak the Republicans want to do is to switch that and give it to the Appropriations Committees. They won't let us do appropriation bills. That is like giving us nothing.

My friend went into great detail about the NLRB. For the entire history of this country, the President has had the power to recess-appoint people. The Republicans have found a gimmick here that now they are saying—no one has raised any objection about the qualifications of the people the D.C. Circuit said shouldn't be sitting there. No one raised anything about their qualifications. If there were an effort to avoid what is going on around here, they should approve these people.

The other Alice-in-Wonderland statement made by my friend is: The majority leader can set votes whenever he wants. Oh, don't I wish. Stall and ob-

struct is what we have around here. It is very hard to schedule votes. As has been indicated by me a few minutes ago, we wait and we wait, and finally we get a vote after months and months—and I indicated sometimes years—and then it is a big and overwhelmingly positive vote. Yes, because there is nothing wrong with the person to begin with.

As I said early on: He makes my case. There isn't a single word that has been said here today about the qualifications of the three people who are seeking to go on the NLRB—or the two Republicans. He has not produced any facts to question their abilities. He just argues that the President's timing was not quite right.

I think everyone realizes that when you are trying to get somebody confirmed, such as Richard Cordray, and you are waiting 725 days, maybe that is a little too long.

Listen to this biggy here: The Principal Deputy Under Secretary of Defense for Acquisition, Technology and Logistics—that may sound like a big fancy word, but that is an extremely important position in the Secretary of Defense's office—has been waiting 300 days. The Governor for the International Monetary Fund, Jack Lew, our present Secretary of Treasury, has been waiting 169 days. It is now probably 172, I guess, since this could be old; the EPA, 128 days; Secretary of Labor, 114 days; NLRB, 573 days; the Chairman of the Export-Import Bank, 111 days; Associate Attorney General, 294 days; Chemical Safety and Hazard Investigation—shouldn't we have something going there? Well, they don't believe in the program so we have been waiting now for 295 days to even have a vote on that.

Remember, he said I can schedule a vote whenever I want. I wish that were true.

Member of the Board of Directors for the Tennessee Valley Authority, 292 days; Commissioner of the Rehabilitation Services Administration, 156 days. The average of those few people I mentioned comes to 260 days.

I presented my case. The case is: This is not working. For the Republicans to come here today and say: Well, that is fine, we will give you Cordray, all we want you to do is change things so the man never has any money to do his job doesn't sound like a very good deal to me. There has been no answer to these periods of times when we waited and waited, and finally we get somebody approved by an overwhelming margin. Why? Because all they are doing is stalling.

I used to do a little work in the courts and I would have a jury. I would appeal to the jury to make a decision. The jury I am appealing to right now is the American people. They know the Senate as it used to work. Our approval rating is in the swamps, and we need to do something to change that. Will this change everything? No. But remember: Since 1977, the rules of the Senate have

been changed a couple of times a year in this body. My friend the Republican leader said previously that that is okay; that is what the majority could do.

The ACTING PRESIDENT pro tempore. The Republican leader.

Mr. McCONNELL. Mr. President, on the issue of delay, there are 148 nominations in committees. The majority leader's party controls the committees. They can come out at any point. On the calendar of business on the floor 21 nominees are pending.

The majority leader, I am sure, will remind everybody he always gets the last word so I am sure he will speak again. But I would remind everybody of the core point here: He gave his word without equivocation back in January of this year that we had settled the issue of rules for the Senate for this Congress. That was in the wake of a bipartisan agreement to pass two rule changes and to pass two standing orders. So at the core of this is the majority leader's word to his colleagues and the Senate as to what the rules would be for this Congress. He gave his word, and now he appears to be on the verge of breaking his word.

Secondly, the only nominees—let's make sure we understand this—likely to have a problem getting cloture are the ones who were unconstitutionally appointed, according to the Federal Court in the District of Columbia.

So where we are is the majority leader wants to fundamentally change the Senate after breaking his word in order to jam through three nominees the Federal Courts have said were unconstitutionally appointed. That is where we are.

I think it is a sad day for the Senate. I hope the majority leader will reconsider what I consider to be a highly irresponsible action on his part.

Is the Senator from Tennessee going to pose a question to me or to the majority leader?

Mr. ALEXANDER. I will wait until the majority leader finishes.

Mr. McCONNELL. I yield the floor.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. My friend the Republican leader continues to ignore his words, that he would process nominations consistent with the norms and traditions of the Senate. Please. That is just ignored by him? If anyone thinks since the first of this year that the norms and traditions of the Senate have been followed by the Republican leader, they are living in gaga land.

The Republican leader agreed that we should not have filibusters except in the case of an extraordinary circumstance. He agreed with that, but he ignores that.

I think it is also worth talking a little bit here about how the Republican leader complains that people just don't like Congress. Well, there is a reason for that, and the Republican caucus deserves most of the blame. The Gallup organization polled Americans last

month and asked for some of the reasons why people disapprove of Congress. The two top reasons outdistance all others. They don't like Congress because of gridlock and not getting anything done. Is that our fault? No.

Surveying the years that President Obama has been in office, one can see time after time when Democrats reached out to Republicans to get things done, and no one can see where they have done that. One can see that time after time the Republican leader has pressured his colleagues not to work with us.

There is no reason Congress should be held in such low regard. We should clear the calendar. They are not going to do that. They are going to continue this process over the next 3½ years, badgering, saying: We are really good. We got this nomination done, and we approved it 98 to 0—after waiting months.

It is the first time ever in the history of this country that the Secretary of Defense has been filibustered.

So I appeal to my friends on the other side of the aisle, remember the words I read from Senator McCONNELL where he said a simple majority has the right to do this. And we know that is true.

Mr. WICKER. Would the distinguished majority leader yield for 30 seconds?

Mr. REID. I would be happy to yield for a question.

Mr. WICKER. I would ask the majority leader, in an hour or so Democrats are going to have lunch with Democrats, and Republicans are going to go to another room and have lunch with Republicans and talk to each other about what the other side is doing. This is such a serious matter. It may be the wise thing to do. I totally disagree. But I think the majority leader will agree that this is a watershed moment.

Could it be that early next week, just once we could all meet together, perhaps in the Old Senate Chamber—every Democrat and every Republican—for a caucus where actually Republicans listen to Democrats as to what they perceive as the grievances and rank-and-file Democrats listen to our side?

People are off in classified briefings right now. People are in committee meetings. People are doing the work of the Senate whether the public realizes it or not.

We are not listening to each other as rank-and-file Members. I would implore the leadership of this body, next Tuesday let's clear the Old Senate Chamber and get every Republican and every Democrat who wants to be there and actually quit talking past each other and see if there is a way for us to avoid this pivotal watershed moment in the history of the Senate.

Mr. REID. I appreciate the remarks of my friend from Mississippi. I am going to start the process today. I am going to file cloture on a bunch of nominations, and those votes will

occur next week when we schedule them. I would be happy to see if there is a way I can meet with a few Senators. I have already done that with a few Republican Senators, and I am happy to see if there is a way of getting us together. We had a nice caucus together not long ago led by Senator McCain, which was really memorable, but I listened to a bunch of them.

I say to my friend, if you are so concerned—and I know you are—about the process, I think you need to take a look at where you are.

About Cordray, I am so tired of hearing this tweaking: All we need is to tweak this a little bit and we will let you have it.

I repeat, I say to my friend, that the tweak is to take away his ability to exist. That is not a tweak; that is further obstruction and distraction from what a law we have is meant to do.

The NLRB, all the happy-talk I hear here—and I don't say that to disparage anyone—we will be happy to help you with that, but get rid of those two people.

No one questions their qualifications.

And I am happy to hear my friend here suddenly so enthused with that court decision. The court decision doesn't stop us from doing anything. The court decision is something that says that we can do whatever we want to do. We are a legislative branch of government. We don't have to follow what the Supreme Court does.

So without going into any more dialog, I appreciate what my friend says. I think what he needs to do with his caucus—we are going to have one today—is take a look at NLRB. There are five of them. We have no problem with the two Republicans. Let's get that done. Let's get Cordray done. Let's get the Secretary of Labor, who has waited such a long time, and we have the Secretary of the EPA.

I say to my friend, I don't know why his caucus has such heartburn over things dealing with labor. My friend said—I don't know exactly—leftwing big labor bosses. We have the Secretary of Labor who is being held up. We have three NLRB people being held up. Let's try to work our way through that. I would be happy to listen to any way he thinks we can get through that. If we can't, Tuesday we know what is going to happen.

Mr. WICKER. Just to understand, is that a yes on trying to get us together, as Republicans and Democrats, as early as lunch Tuesday to see if there is some way we can talk about this?

Mr. REID. I am happy to consider that. I have talked to a number of Republican Senators. One of them called me at home last night. I was happy to take the call. He said: What happens if cloture is invoked on the people you put forward? Well, if that happens, I have no complaints. I would hope everyone would learn from this process.

I think we need to look at what I just said. All you need is six Republicans to agree to do something about NLRB, to

do something about Cordray without taking away his abilities.

Are there any appropriators here on the floor? I have been away from the committee for a while. We are not doing much appropriating around here. I know Senator McCONNELL and I were on the committee together. I gave my spot up to Ben Nelson some time ago. I still have seniority protected there.

So I am happy for the Senator's suggestion. We will take a look at that. But it is a very simple problem here. We need to get the labor—and they are not big bosses. But my culinary workers—70,000 of them in Las Vegas alone—who have problems with management, they want to be able to gripe to somebody.

Mr. WICKER. Would the distinguished leader yield on simply one further matter?

Mr. REID. Sure.

Mr. WICKER. Did the majority leader understand, as I did, Leader McCONNELL saying just a few moments ago that the Secretary of Labor nominee is likely to go forward very soon?

Mr. REID. That is what he said.

Mr. WICKER. And that the EPA Administrator is likely to go forward almost immediately? So we really are down to the three positions where there has been a U.S. appeals court decision, which arguably could be viewed as an extraordinary circumstance.

Mr. REID. I say to my friend, this is the first time we have dealt with this. As the Senator knows, Senator McCONNELL is one of those who led the charge a number of years ago. I read part of his statement.

It would seem to me that it would be appropriate for folks to understand what I just said. It doesn't take somebody who has been here as long as Senator Byrd was.

I would also say this. To say to me now: We are going to do McCarthy—well, she has only waited 150 days. We are going to do Perez; we will do him right now. But that is the problem, I say to my friend—we shouldn't be waiting around here for months and months to get a vote on one of these nominees. That is the whole issue.

So I appreciate his consideration. I am going to go now to my office and meet a few people. I am happy to answer any questions while I am here on the floor.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. CORKER. First of all, I know there have been a number of conversations, and I appreciate the majority leader allowing me to talk with him recently on the phone. And I know we have an issue here. I would just go back to the question from the Senator from Mississippi.

Last night I was on the phone with numbers of Members of high esteem in the Senator's caucus, and when I talk with them about this issue, they have no understanding whatsoever about any background. They just say: Look, I am frustrated, so I am going to vote for the nuclear option.



And I would say, to respond to the Senator from Mississippi, that the Senator is right. So we have some things that are coming up here momentarily. It is possible that many of them—maybe all but many of them—will be resolved. But it seems to me, unless we do the thing the distinguished Senator from Mississippi just mentioned, there is going to be a continual gap of knowledge regarding these issues.

So I would just say that I think the majority leader knows I do everything I can and the senior Senator from Tennessee does everything he can to try to make this place work. We want to solve our Nation's problems.

I think if the majority leader will put the actual votes off to at least Wednesday, there may be some resolve. But I really would please ask that we have that opportunity the Senator asked for so that really both sides—we need to understand the other side's grievances more, and I know very respected Members on the Democratic side need to understand ours. I think that would be very, very helpful, and I really believe it would cause the leadership to be far more productive and worthwhile, and the majority leader could come in every morning smiling the way he is right now.

Mr. REID. Mr. President, to my friend from Tennessee, from the day he got here he has tried to follow on the mold set by Senator ALEXANDER. They are both conciliators. They like to work things out. We haven't been able to work too many things out, but they try. No one tries harder than they do.

I just want to say this: We talk about extreme circumstances. That was the colloquy my friend and I had here on the floor. So to now say the NLRB is extreme circumstances is like somebody setting a house on fire and then complaining their house is gone. The extraordinary circumstances have been created by you guys.

So I say again to my friends here in the Senate that I would be happy to do a joint meeting with the two caucuses but not to come here and just throw numbers around. The point is that I want this resolved and I want it resolved one way or the other. I am through.

Just to remind everyone, for two Congresses—the last one and this one—I have gone against the wishes of the vast majority of my caucus not to have done something before. And we did a few things. Most of them were window dressing that hasn't accomplished much of anything on the rules that we changed.

So I am happy to have a group of Senators indicate to me how we are going to get these people I have on the calendar done. This is no threat. I just think that would be the appropriate thing to do. If we have something positive to report in a joint meeting without going back to the same stalling, obstruction—I don't need to go over this list of people again. Some have been waiting for years to get some-

thing done. I just am not going to continue doing that. We have to have something more than my friend coming to the floor and saying: I am not going to do anything unless there are extraordinary circumstances. I think that has been stomped into the ground. So there is name-calling we need to stop.

I am happy to go to my caucus today and make my case. I am very fortunate that I have a pretty good hand on the caucus, and we are going to go ahead and do what is good for the country. I hope that, as everyone knows, the vote will be scheduled anytime we want on Tuesday.

Any other questions?

#### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

#### ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 12:30 p.m. will be equally divided and controlled between the two leaders or their designees, with Senators permitted to speak for up to 10 minutes each, with the Republicans controlling the first 30 minutes and the majority controlling the second 30 minutes.

The Senator from Tennessee.

#### NOMINATIONS

Mr. ALEXANDER. Mr. President, I thank the majority leader for his statement, for the time he has spent.

I was looking at the Executive Calendar. But, first, I have spent most of this week working on the student loan issue, as the majority leader knows. And we are coming to an agreement, it looks like, as we have with a number of other things. But I would like to renew to the majority leader the suggestion that we all get together next week and talk this through, as the Senator from Mississippi has suggested. I think it would be a wise thing to do.

There are other Senators here who wish to speak, so I will try to be succinct. Let me address just a few of the points the majority leader made.

One reason I think it would be wise for us to get together as Democratic and Republican Senators is what he is saying is different from the way I read the facts, and one of us has to be wrong about that.

For example, have Republicans used the filibuster to deny President Obama's nominees a position in government? The answer is a fact. I invited the Senate Historian and the Congressional Research Service over to my office. I asked them the question. Here is the answer to the question: In the history of the Senate, no Supreme Court Justice has ever been denied his or her seat by a filibuster. There was a little incident with Justice Fortas that Lyndon Johnson engineered, but that was different. So in the cases of the Supreme Court, zero.

How many district judges have been denied their seat by filibuster? The answer is zero.

How many Cabinet members have been denied their seat by a failed cloture vote filibuster? The answer, according to the Senate Historian and the Congressional Research Service, is zero.

How many circuit judges have been denied their seat by a filibuster? The answer is seven. How did that happen? Democrats, for the first time in history, when President George W. Bush came in, blocked five. And we said: Well, if you are going to change the precedent, then we will change the precedent, so we blocked two. That is what happens around here. But other than that, it is zero.

Then the majority leader said there has been some big delay about President Obama's nominees. These are not throwing statistics around. That is either true or it is not true.

Here is what the Washington Post says and the Congressional Research Service says. The Washington Post, by Al Kamen, on March 18, 2013: President Obama's second-term Cabinet members are going through the Senate at a rate that "beats the averages of the last three administrations that had second terms."

President Obama is being better treated in terms of his Cabinet nominees than the last three Presidents.

I asked the Congressional Research Service the same question. They said: As of June 27—last month—his nominees were still moving, on average, from announcement to confirmation, faster than those of President George W. Bush, faster than those of President Clinton.

Someone in the Democratic caucus needs to hear this. The number of Cabinet nominees who have been denied a seat by filibuster is zero. President Obama's Cabinet nominees are moving through the Senate faster than his last three predecessors. That is important information.

Now, are there a lot of nominees sitting around for too long a period of time? I have the thing we call the Executive Calendar right here. Senator MCCONNELL referred to it. I could go through it quickly. I count 24 people on the calendar. The one who has been on there the longest was reported by committee on February 26 of this year. That is a little over 4 months ago.

Let's be very elementary about this. The only way you get on this calendar is to be reported out of committee. The only way you get out of committee is for the Democratic majority to vote you on to this calendar. So we can fill this calendar up any time the Democratic committee majority wants to.

Of the people here, there is a brigadier general named Long. The committee has asked that we hold that. There is Jacob Lew to the International Monetary Fund. Bring him up. Bring him up. He will be confirmed.

Let's go back to that. The only way you get a name to a vote on the floor is if the majority leader brings his name to the floor. Jacob Lew has been



reported from Committee since April 16. Bring him up.

Here is an Air Force person. Here is Ms. McCarthy from Massachusetts. She has been reported from the committee. Bring her up. The Republican leader has said she will get cloture. That means she will be confirmed. He said the same thing about the nominee for the Department of Labor. He has been reported since May 16.

Mr. President, I am not a very controversial person. I was held up for 88 days by an ill-tempered Democratic Senator, for what I thought was no good reason, relying on article II, section 2 of the Constitution's right to advise and consent. President Reagan's nominee for Attorney General Ed Meese was held up for 1 year, and nobody thought about changing the rules of the Senate because it used its constitutional authority to advise and consent. Former Senator Rudman was held up by his home State Senator until Rudman withdrew his name, and then he ran against that Senator and was elected to the Senate.

The advice and consent responsibility of the Senate has gone on since the days this country was founded.

If you go down through this list of people, there are only 24 on the list. He could bring them all up. And 24 is not very many.

Then it reminds me that right after that are the privileged nominations. What are those? Those are the result of our rules changes which removed a number of people from Presidential confirmation and created a whole new category for several hundred executive positions so they do not go through a more cumbersome process, and that is working very well.

So zero filibusters denying nominations, Cabinet members going through the Senate more rapidly than the last three Presidents. So what is the beef? What is going on? There are only three judges on this calendar, an embarrassingly small number for us to deal with. We could clear this calendar in one afternoon. How do we do that? The majority leader brings them up—except for three who are illegally appointed.

Now, I will not go into a long thing about the three illegally appointed, except to say they are illegally appointed.

Most of the Founders of this country did not want a king. They created a system of checks and balances, and they created a Congress, and they created an ability for us to restrain an imperial Presidency. That is what this advice and consent is supposed to do, and we should exercise that, as former Senator Byrd used to say most eloquently on this floor. It is our opportunity to answer questions. Just because the majority leader seeks to cut off debate does not mean that person is being denied confirmation.

I will give you an example: Secretary Hagel. The majority leader tried to cut off debate 2 days after he came to the floor from the committee. We said: We

want a little more time to consider this. We will be glad to vote for him for cloture in 10 days. He went ahead with the cloture vote and called that a filibuster. But Secretary Hagel is sitting in his spot as Secretary of Defense today.

So you can go down through all of these nominations and really find no evidence—no evidence whatsoever. So we need a meeting of the two caucuses to say: What is going on? Why are you seeking to do this?

The last thing I would like to say is, it is appropriate from time to time in the case of subcabinet members to use the cloture to deny a seat. That has happened seven times. John Bolton was one that the Democrats did to President Bush.

As I conclude my remarks, I would like to say this: The majority leader said: Well, we have changed the rules 18 times.

Never like this. What he is proposing to do is to turn this body into a place where the majority can do whatever it wants to do. That is like the House of Representatives—so the majority can do whatever it wants to do. A freight train can run through the House of Representatives in 1 day, and it could run through here in 1 day if the Majority leader does this. This year it might be a Democratic freight train. In a year and a half it might be the tea party express. There are a lot of people on that side of the aisle who might be very unhappy with the agenda that 51 people who have creative imaginations on this side of the aisle could do if they could do anything they wanted to do with 51 votes.

I like to read a lot of history. John Meacham's book about Jefferson has a conversation between Jefferson and Adams at the beginning of our country. They were President and Vice President, I guess, at the time. Jefferson said to Adams he feared for the future of the Republic if it did not have a Senate. "[N]o republic could ever last which had not a Senate. . . . [T]rusting the popular assembly"—that means the House, that means a majority vote institution—"for the preservation of our liberties. . . . [is] the merest chimerica"—or illusion—"imaginable."

One other distinguished public servant said the same thing in his book in 2007. This is what HARRY REID said in his book when he wrote about the nuclear option. He was talking about the then-majority leader Senator Frist. He decided to pursue a rules change that would kill the filibuster for judicial nominations.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. ALEXANDER. I will be through in just a minute. I ask unanimous consent to speak for another minute.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ALEXANDER. So the leader said: Senator Frist of Tennessee, who was the Majority Leader, had decided to pursue a

rules change that would kill the filibuster for judicial nominations.

This is HARRY REID writing.

And once you opened that Pandora's box—Said Senator REID—

it was just a matter of time before a Senate leader who couldn't get his way on something moved to eliminate the filibuster for regular business as well.

Senator REID wrote:

And that, simply put, would be the end of the United States Senate.

I do not want Senator REID to have written on his tombstone he presided over the end of the Senate. Yet if he does what he is threatening to do, that would be what he is remembered for in the history of this country.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. BARRASSO. Mr. President, I listened very carefully to the majority leader this morning. What he said was confirming nominees should be the norm, not the exception—confirming nominees should be the norm, not the exception.

Well, I would ask, respectfully, that the majority leader take a look at actually the record because you cannot ignore the facts.

Of the 1,564 nominations that President Obama has sent to the Senate, only 4 have been rejected—4 of 1,564. During the first 2 years of the President's first term in office—the 111th Congress—the Senate confirmed 9,020 nominees and rejected 1. In the second portion of that first term—which was the 112th Congress—the Senate confirmed 574 nominees and rejected just 2. Now, during the 113th Congress, the Senate has confirmed 66 nominees and rejected just 1.

In terms of Cabinet nominees—and we heard the majority leader speak of that—the Congressional Research Service shows that President Obama's nominees have waited an average of 51 days. That is shorter than for President George W. Bush and shorter than the time under President Clinton.

When you take a look at judges—and the majority leader talked about that—the Democrats should remember the Senate has already confirmed more judges this year so far than were confirmed in the entire first year of President Bush's second term.

When you go over this item by item, detail by detail, what you see is that confirming nominees is the norm, not the exception.

It was interesting to listen to the majority leader talk about Don Berwick, who was actually nominated to be the head of Health and Human Services, Medicare. As the Medicare nominee, what happened? The Democratic chairman of the committee never even scheduled a hearing. The Democrats are in charge of that nominee. The President made a recess appointment. There was never even a nomination hearing.

We go through the years and look at the quotes, and here is Senator REID in 2005:

Some in this Chamber want to throw out 214 years of Senate history in the quest for absolute power.

He said:

They think they're wiser than our Founding Fathers.

Senator REID said:

I doubt that that's true.

I think we should all follow that advice. We are not wiser than the Founding Fathers. It is not time to throw out the rules.

Then, even as majority leader, in 2009, Senator REID said:

[T]he nuclear option was the most important issue I've ever worked on in my entire career, because if that had gone forward it would have destroyed the Senate as we know it.

So there is not a problem with President Obama's nominees being treated fairly and being treated in a timely fashion. There is not a problem with his nominees in terms of not being confirmed—1,560 confirmed, 4 rejected.

Senate Democrats should remember—should remember—their prior commitments and abandon this plan before irreparably damaging the Senate.

I yield the floor.

Mr. CORNYN. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MERKLEY. I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### SENATE RULES

Mr. MERKLEY. Mr. President, this morning a significant debate began on the floor of the Senate as to how to make the Senate function within the framework of the Constitution and within the norms and traditions of the Senate.

Indeed, the Constitution envisioned three coequal branches of government, and it provided checks and balances. One of those was that when the President nominates individuals for executive branch positions, Congress could serve as a check. Specifically, the Senate was given that power, to review the qualifications and make sure there was not something outrageous about the nomination, as a check on the Executive.

This principle was embedded as a simple majority review. Indeed, in the Constitution, it is in the same paragraph that lays out a supermajority standard for treaties, but retains a simple majority standard for reviewing executive branch nominations.

The Senate in recent times has started, however, to use the privilege of having your say; that is, everyone should be heard before a decision was made, as a way to change that fundamental principle in the Constitution from a simple majority to a super-

majority. We can't close debate here in the Senate without a supermajority. Even though no one has anything else to say, that power has been used to prevent a simple up-or-down vote.

Under this theory of three coequal branches of government, no one could envision that a minority of one Chamber of the legislature could, in fact, completely undermine either the executive branch or the judicial branch. That certainly was never anticipated. Indeed, the reason it was left as a simple majority is that our Founding Fathers who were writing the Constitution had experienced the challenge of what a supermajority would do. Madison said, regarding the supermajority, "The fundamental principle of free government would be reversed."

He said in Federalist Paper No. 22, speaking from the painful experience as a New York representative to the Congress that created the Articles of Confederation, that supermajority rule results in "tedious delays; continual negotiation, and intrigue; contemptible compromises of the public good."

Madison was not the only one to observe the deadly nature of paralysis to a Congress. In Federalist Paper No. 76, Alexander Hamilton lays out the nomination process in great detail. Indeed, he says he has kept the nomination power with the President and not the legislative branch to avoid the "party likings and dislikes, partialities and antipathies, attachments and animosities, which are felt by those who compose the assembly."

He then went on to argue the Senate is necessary to vet nominees for the "intrinsic merit of the candidate" and continued, "the advancement of the public service."

Hamilton states that he expects nominees would be rejected only when there were, and I quote, "special and strong reasons for the refusal."

This principle of oversight to make sure that something that is outside the bounds of reason is done by the executive branch has now reached a point of deep abuse.

Our majority leader came to the floor earlier today, and he laid out the history of how the nomination process has been bent from an unrecognizable process that neither Madison nor Hamilton nor any of our other Founders could have envisioned, a process that allows this Senate to utilize the privilege of having your say on the floor and turn it into a weapon of destruction against the legislative branch and the judicial branch.

We can take a look at how long it has taken folks to be able from the announcements and their waiting time to get a vote, such as Richard Cordray, 724 days and counting; Alan Estevez, 292 days; Jack Lew, 169; and so on and so forth.

The traditional norm of the Senate, a timely up-or-down vote with rare exceptions, is certainly missing today.

The executive branch is headed by the President, who was elected by the

citizens of the United States. In this case President Obama was not elected once, he was elected twice. He was elected with a vision, and people expect, the citizens expect, that the President will operate the Presidency consistent with implementing that vision and carry out the responsibilities of an executive branch.

This cannot be done if the folks necessary to lead different agencies or sit on different boards cannot get through the nomination process in this Senate.

For those who are passionate about believing in the vision we have, the constitutional vision, the balance of power, the coequal branches of government, we must act to remedy the deep abuses we are experiencing today.

Let me first emphasize the extensive delays. Executive nominees who are ready to be confirmed by the Senate have been pending an average of 258 days, the better balance of a complete year, more than 8 months since they were first nominated—258 days. This hardly meets the norm or the tradition of the Senate of timely consideration. This has been a prime cause of the difficulty filling executive branch slots. Not only does it make the vacancies extend for a long period of time and, therefore, dysfunction in executing the responsibilities of government, but it certainly makes it more difficult to recruit qualified folks who don't want to be held in limbo and procedurally tortured by a minority of the Senate in this fashion. This is not new. This did not start this year, but it keeps getting worse.

In that context, let's go back to January. In January, there were a series of bipartisan modest changes in the rules, and they were accompanied by a promise of comity. That is c-o-m-i-t-y, comity. Specifically, the pledge by the Republican leader was this:

Senate Republicans will continue to work with the majority to process nominations, consistent with the norms and traditions of the Senate.

What are those norms and traditions? Those are timely consideration, up-or-down votes, with rare exception.

Let's take a look and see if what has happened over the last 6 months is consistent with the norms and traditions of the Senate and let's start first with looking at the Consumer Financial Protection Bureau. Only weeks after the January pledge, 44 Republican Senators sent a letter that said: "We will not support the consideration of any nominee, regardless of party affiliation, to be the CFPB director"—February 1, 2013, just days after the Republican leader pledged a return to the norms and traditions of the Senate.

This is not within the norms and traditions of the Senate, even going back to our Founders, who pointed out that they were worried about partisan, party-affiliated differences and animosities permeating the system. They laid out a simple nomination-confirmation process about the qualifications of the individual, not about the legitimacy, if

you will, of the agency. It is a policy decision. It is a policy that has been passed in this Senate saying the Consumer Financial Protection Bureau is a valuable addition to end practices that are predatory financial practices.

We had a consumer safety group that looks at things such as keeping lead out of the paint on children's toys. That is very important, and it goes on to monitor the safety of toys and many other aspects.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. MERKLEY. I ask unanimous consent to speak for an additional 10 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MERKLEY. We indeed in this case are talking about an agency that will protect our families from predatory financial practices. We all know what those are. They are hidden charges on prepaid credit cards. They are exploding interest rates on mortgages, where there is a teaser rate for 2 years and then the mortgage zooms up from 4 percent to 9 percent, driving defaults. In fact, that was a major factor, not only in the loss of homes of millions of families but also a major factor in the meltdown of our economy.

What is good for the family, building successful families, is also good for building a successful economy. We had that debate, and we as a Senate approved creating this organization. Now we have 44 Senators who say they are going to destroy this agency by blocking a Director from ever being appointed. This is 100 percent outside the norms and tradition of the Senate.

Of course, that restoration of the norms and traditions was the promise made on this floor by the Republican leader just days before this letter was sent.

According to the Senate Historian, this is the first time in history a political party has blocked a nomination of someone because they didn't like the construction of the agency. Let me repeat that. This is the first time in history.

A few weeks later we had another first, the first ever filibuster of a Defense Secretary nominee. The New York Times wrote: "The first time in history that the Senate has required that a nominee for Secretary of Defense clear the 60-vote hurdle."

This is the first time in history. The irony, of course, is that the nominee was a former Republican colleague of this Chamber, Chuck Hagel. Certainly this was out of sync for the norms and traditions of the Senate.

Then we come to this spring, again, unprecedented delay tactics. A Republican former House Member called the boycotting of Gina McCarthy "an unprecedented attempt to slow down the confirmation process and undermine the agency."

Is that consistent with the norms and traditions that were promised in January? It is not.

In fact, I sit on the committee that voted Gina McCarthy out. When we tried to have the vote, we were faced with the boycott; that is, a quorum was denied because our colleague, Senator Lautenberg, was extremely sick and could not attend. Taking advantage of his illness, Republicans decided not to show up and therefore block that nomination from coming out of the committee. Only when Senator Lautenberg came in, in the midst of an extreme illness, did the Republican members attend the committee. This is part of this ongoing process of unprecedented obstruction.

Real delays involve real hurt. It is not an academic debate. This obstruction is having a real impact on people's lives.

Let's turn to the National Labor Relations Board. In a few weeks in August, there will no longer be a quorum of the NLRB. This means for the first time in 78 years there will be no referee in place between the rules for the conduct of employers and employees. That referee makes sure that illegal practices by workers don't occur and illegal practices by employers don't occur. We lose that referee in a few weeks and that, as Members of this Senate have expressed, is their goal. Again, this is unprecedented—not putting forward a policy debate over eliminating the National Labor Relations Board but instead undermining it by blocking the ability to hold up-or-down votes on the nominees.

Workers are deeply affected by whether this referee is in place. Kathleen Von Eitzen, a Panera baker who tried to organize her fellow bakers, came to Washington, DC, to talk about how they have been unable to get to a final contract and how, in the process, their members have been cut, in some cases their hours have been cut, and a whole host of other retaliatory measures. These are the things you need a referee for—to say that is not acceptable or to judge the evidence as both sides present it. That is why we need the NLRB.

How about Marcus Hedger, who was fired for taking a friend through the shop floor. It just so happened Marcus was a union leader in his shop. He asked permission to escort a friend through the floor and it was granted. Then the employer said: Aha, we got you. We can fire you because you know you are not allowed, under the rules, to escort a friend through the shop floor.

The NLRB ruled quickly, saying this was an extraordinarily flimsy pretext for firing someone because he happened to be a shop steward, and it was during the timeframe of a labor negotiation. The company was trying to send a message. They were trying to say: If you support workers organizing to fight for living wages, you may get fired, and here we have just set an example.

It is the NLRB that is the referee that says those sorts of unacceptable tactics cannot occur.

Back to the Consumer Financial Protection Bureau. It has refunded Ameri-

cans \$425 million in savings by getting rid of credit card tricks and traps.

I think it is important we fight for the success of our families. These are family values. We should not measure the success of our Nation by the size of the gross domestic product. We should measure it by the success of our families, and eliminating predatory tactics is an incredibly important piece of that puzzle that touches millions.

What we have seen is this: The pledge made on this floor by our Republican leader in January—the pledge that said we will return to the norms and traditions of the Senate for nominations—has not occurred. The Republican leader may indeed have had every good will in making that pledge, but it requires the cooperation of the entire caucus and that certainly has not occurred and we haven't heard a strong effort to abide by that pledge made in January.

So it is time to restore the norms and traditions in the Senate, where the Senate provides a check on outrageous nominations, but it is a check, not a form of paralysis. It is advise and consent, not paralyze or veto.

For those who love democracy, it has been sad to see this Chamber, once considered the premier deliberative body in the world, fall into such a State of paralysis and dysfunction. It is up to us, as Members of this body, to come forward and say that is absolutely unacceptable.

That is the debate that was started today. I applaud the majority leader who in January of 2011 strived to resolve this dysfunction through a gentleman's agreement, but within weeks that gentleman's agreement was in tatters. I applaud the majority leader for his instinct in January when he sought modest bipartisan rule changes with the promise of comity and a pledge from the Republican leader to return to the customs and traditions of the Senate. His instinct was right. We should be able to accomplish these things by restoring the social contract.

The leader, HARRY REID, has gone the extra mile and then another extra mile in seeking to adopt the social contract that held this body together, but now what we see is it has not been reciprocated. The pledges made, the promise of comity, the gentleman's agreement has not resulted in material changes in tactics employed on the floor of the Senate. So now we have to work to restore the vision of our Founders, the vision of simple majority, with timely up-or-down votes on nominations. We owe this to the executive branch, and we certainly owe it to our citizens who reelected President Obama.

I wish to address one last point; that is, it has been argued what the majority leader is proposing—that we, if necessary, change the rule or change the application of the rule in order to make this place work again—is unprecedented.

The PRESIDING OFFICER (Ms. BALDWIN). The Senator's time has expired.

Mr. MERKLEY. I ask unanimous consent to speak for 1 more minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MERKLEY. I have in my hands a document entitled "The Senate's Power to Make Procedural Rules by Majority Vote," and this lays out a whole host of viewpoints expressed in 2005 that I think would be interesting reading for my colleagues across the aisle because it was their document.

I also have a long list of cases where every other year, on average, we have changed the application of a rule in order to make the Senate function in a different way, a better way. So this is far from unprecedented.

It is time for us, together as Senators, to live up to our responsibility and restore the power to the executive branch to put their folks in place, operating under our advice and consent in the way envisioned in the Constitution.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. UDALL of New Mexico. Madam President, I come to the floor to speak about the rules issue that has come to a head in the Senate. We have seen unprecedented obstruction by the other side of the aisle. They have continually blocked nominations—and I will get into the numbers—and this is something that has been building since we came in, in this Congress. We had a debate about rules, and we didn't do the things we should have done. We should have put in place a talking filibuster. There is no doubt about it. We should have put in other rules changes. What has happened is we find ourselves in the situation of a tyranny of the minority.

What is a tyranny of the minority? The Founders talked about it. The Founders saw that if a situation was created where a minority could block the action of the Senate, then the minority would actually be governing, and that is the situation we have before us. The minority governs when it comes to nominees, and they have blocked nominees in a very significant way. I can't repeat enough that this is unprecedented in the history of the country.

The President can't get his team. What is at issue is we have a President of the United States who had a very big win in the last election. He put himself out there, he campaigned on a number of issues, and he won the election. So one would think he can now get his team in place, but he is unable to get his team in place. He tries to propose people.

For example, in talking about the Consumer Financial Protection Bureau, we have a very qualified attorney general—and I was a former attorney general a few years back—a young man the President put forward from Ohio who was very well qualified. He has not been able to get a vote. He is in an agency that is tremendously important to the middle class, he is in an agency

that is important to consumers, and he is able to do things that are very important for consumers across this Nation when it comes to bank loans, when it comes to safety issues, and all across the board. Yet we have a situation where he cannot be sworn in and do his job as a full-time appointee for that agency. This is absolutely unprecedented, and we have to tackle this issue.

What is happening with the minority side is, if they do not like a nominee or they do not like the policies the nominee stands for or they do not like the administration's policies, they prevent the nominee from taking office at all. In effect, through the minority process that is being utilized, they are determining policy.

That is what the big objection is, and I think we are going to have to address this. I am very supportive of Leader REID coming out and saying we have to address this, we have to deal with this, and I think we are going to deal with it starting today and flowing into the next week or so.

It was mentioned here recently that the Republican policy committee put out a document entitled "The Senate's Power to Make Procedural Rules by Majority Vote." I believe that document was put into the RECORD.

Earlier in the debate this document was referred to, and I just want to make sure everyone understands it is very clear, in reading this document, that at the time of April 2005 and in that period, the Republicans were making very strong arguments that we could go forward with rule changes during the middle of a session. They were pointing out that Majority Leader Robert Byrd—and we all know Robert Byrd was one of the Senators in this institution who studied and knew the rules; most people believe Robert Byrd knew the rules better than any Senator in the last 100 years—always felt we had the right, under the constitutional option, to make changes that needed to be made.

In 1977, 1979, 1980, and 1987, Majority Leader Byrd established precedence that changed Senate procedures during the middle of a Congress, and I think that is what we are talking about, something along those lines. This is a critical issue for us as we try to move forward and we try to govern.

The Democrats have a majority and a big majority, if we consider the Independents who have joined with us, no doubt about it. Yet we cannot govern because of the procedures being utilized today.

I wish to highlight a little of this unprecedented Republican obstruction. Executive nominees who are ready to be confirmed by the Senate have been pending, on average, for 260 days—more than 8 months since they were first nominated. The Senate confirmed only 34 executive nominees by the July 4 recess compared to 118 at this point in the Bush administration. There are 184 pending executive nominees.

Since President Obama took office, Senate Republicans have filibustered 16 executive nominations and two nominees, including Mr. Cordray to be the head of the Consumer Financial Protection Board, via filibuster. For the first time ever, Senate Republicans filibustered a nomination for the Secretary of Defense. As the New York Times noted, "The vote represented the first time in history that the Senate has required that a nominee for Secretary of Defense clear the 60-vote hurdle before a final simple majority vote."

That is the New York Times.

Senate Republicans continue to block the nomination of Gina McCarthy to be EPA Administrator, claiming she has been unresponsive. Mrs. McCarthy was forced to answer more questions than ever before—more than 1,100 questions—since Senate Republicans boycotted her hearing at the committee I serve on, the Environment and Public Works Committee.

Mrs. McCarthy was previously environmental adviser to Mitt Romney. She has very good credentials.

I urge my colleagues to look at what she did in New Mexico. Here you have Gina McCarthy. There is a potential for a lawsuit. It is an issue that has to do with air quality in New Mexico. She ended up pulling all the parties together through her Regional Administrator and reached a compromise where we closed down two coal-fired plants and opened in their place two natural gas-fired plants. It was considered by the Governor, the EPA Regional Administrator, and everybody as a win-win for everyone, and she engineered that from her position at air quality there in the EPA.

Another point that should be made about Gina McCarthy is Gina McCarthy is a woman who has already been approved by the Senate. She was approved in a lopsided vote and has been doing her job for 4 years.

So what are we doing that they are saying she has to be filibustered, she has to be stopped because they don't like the policies she is going to put in place. It is absolutely outrageous what is happening, and we need to rein this in. I agree Senator REID is headed in the right direction to do this.

I applaud Senator MURRAY for her good work with Senator REID and the leadership team in terms of trying to address how we govern and very much appreciate how she has tried to shape this issue and tries to always work with the Republicans on this issue. We have tried to work through these things and haven't been able to.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Virginia.

Mr. WARNER. Madam President, I appreciate the comments of my colleague from New Mexico. As a former chief executive myself, it is remarkable to me that regardless of who is the President of the United States, he or

she ought to be able to get their team in place, with appropriate oversight and review. Unfortunately, it doesn't seem to be the case in this body.

Many of the other debates we have had are important, but in my 4-plus years that I have been here, this supercedes everything else that if we could reach some resolution on, I think might go further than any other action in both lowering some of the rhetoric and lancing some of the boil of partisanship in the Senate, as well as doing more for the kind of job growth that is still so desperately needed. That is getting our fiscal house in order, getting our balance sheet in order.

We have seen some good news as the economy recovers. We have seen our annual deficit numbers go down, although I have to look with somewhat jaundiced eyes when the press is saying: Hallelujah, this year our deficit may only be \$746 billion. That is still not good enough, and the solution set we are looking for is not that far away.

I am going to make a couple comments and then ask my colleague, the chair of our Budget Committee, to once again make an offer to proceed with regular order, something that is in the backstop of this debate about rules, something our colleagues on the other side of the aisle—perhaps appropriately—beat us over the head for 3 years about the fact that we ought to have regular order around the budget.

It has now been 110 days since the Senate approved a budget, after a marathon session that went to 5 in the morning—a session that I think even our colleagues on the other side who didn't vote for the budget would agree was open and appropriate to rules and everybody got the chance to have their say and offer their ideas.

Now, for the 16th time, we are going to come and ask our colleagues: Let's abide by regular order and go to a budget conference. Let's do the hard work that is necessary to make sure we finish the job of getting the kind of deficit reduction, getting our balance sheet in order, that will allow this economy to move forward and, quite honestly, allow us to get back to regular order on issues such as appropriations bills and a host of other things. I can't speak for everyone, but people in Virginia and I imagine people in Washington State—and I see colleagues from New Mexico and Florida—and elsewhere are saying: What are you doing? Why can't you get something done?

Every day that we remain in this paralyzed state, while it may be great late-night fodder for comedians about Congress's inability to act, at some point this dysfunction erodes the underlying confidence the American people have in our institutions. That is not good for American democracy, and it is not good as well for the ability of our economy to recover.

One of the things we have seen in press reports and what is starting to seep into consciousness is the actions

that were set up in sequestration; that they don't seem to be as bad as people think. But let's remind ourselves that sequestration was set up to be the stupidest option possible, an option so stupid that no rational group of people would ever let it come to pass.

I have cut budgets as Governor. I have cut budgets in business. There is a smart way and a stupid way to cut a budget. We set up a process that was so stupid that no rational group would ever let it happen.

One of the reasons why I think our approval rating hovers around 8 percent is we didn't come together, we didn't let this budget process take place, and we allowed this sequestration to move forward.

The PRESIDING OFFICER. The time for the majority has expired.

Mr. WARNER. I ask unanimous consent for a 5-minute extension.

Mrs. MURRAY. Madam President, I ask unanimous consent for the Senator from Virginia to finish his statement, for me to have 8 minutes of morning business, and then allow our colleagues on the other side to respond.

The PRESIDING OFFICER. Is there objection?

The Senator from Florida.

Mr. RUBIO. Madam President, I don't have objection to the time they want to use. What is our order on the time until 12:30?

The PRESIDING OFFICER. At 12:30, the Senate will stand in recess.

Mr. RUBIO. I ask unanimous consent that after they are done with their remarks, I have 10 minutes. I may have an objection, and probably will, and would like to speak on that as well. I want to make sure we could have unanimous consent on that. I don't intend to keep us in longer than we need to be.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Virginia.

Mr. WARNER. I thank my colleague.

#### BUDGET CONFERENCE

I just want to point out the fact that we are now starting to see furloughs in the Federal workforce. There is no State in our Nation that is more ground zero, that is getting hit harder than the Commonwealth of Virginia with sequestration. There are real people who are being hurt.

We have talked about some of the numbers, whether it is in Head Start or NIH grants, but let me share some of the things I have heard in the last 2 weeks from Virginians.

Pat Hickman, who works at the Department of Defense in northern Virginia, says: "I'm tired of hearing, 'It's only one day,' and 'it's only 20 percent.'"

Pat is now starting to decide, because of these 11 days of furlough, whether she is going to have to start to curtail her contributions to her Thrift Savings Plan. Her retirement would be in jeopardy.

Another employee whose name didn't come forward said that if you have kids

in school, during the summertime they are in daycare. This Federal employee spends \$2,000 a month for daycare, and they are not getting a discount on these expenses that are built into their family budget. How could they have planned 1 year out that they were going to get furloughed 11 weeks in a row?

Craig Granville, who works down at the shipyard in Portsmouth, says that furloughing for the next 12 weeks will hit their expenses hard. He has a wife who is currently going for treatment for an illness and the insurance company only pays half. They have to decide do they cut back on the wife's treatment or do they go into their savings.

I have letters and comments from Virginian after Virginian urging us—begging us—to take off our Democratic and Republican hats and put the interests of our country first and foremost.

I know we have lots of differences on how we want to approach and bridge this gap. We are never going to get to bridge the gap in our differences on the debt and deficit and on the budget unless we can get to conference and try to work it out.

I say in strong support of our Budget chairman, I thank her for the great work she has done in getting a budget in a fair way, where our Republican colleagues had a chance to raise their objections. I hope and pray we will get to that conference so we can get this issue resolved.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Madam President, I thank the Senator from Virginia. There is no one in this body more passionate to do the work to get us to a balanced bipartisan deal, to put the budget deficit and the budget issues behind us, and to get our country back on track than the Senator from Virginia. I know he wants to get to a conference committee as badly as I do—not to demand that we only have our position but to work with others to find a bipartisan solution.

As he so eloquently stated, it has been more than 100 days now since the Senate did pass a budget, and we have tried now 15 times to take the next step to move to a bipartisan conference with the House. Every time we have asked, we have been blocked by a tea party Republican with the support of the Republican leadership.

I understand that for some factions in the Republican Party, "compromise" is a dirty word. That may explain why they have offered up excuse after excuse for blocking the regular budget order we are trying to work toward. They refuse to allow a conference before we get to a so-called preconference framework. They demand we put preconditions on what can be discussed or talked about in a bipartisan conference, to claiming that moving to a budget conference—which leading Republicans called for just

months ago—was somehow now not regular order, to most recently claiming we need to look at a 30-year budget window before we look at the major problems we have in front of us right now, when we can—and must—do both at the same time.

I know there are significant differences between our parties' values and our priorities. Some of us—Democrats and Republicans—think this is a reason to come together and try to reach a bipartisan deal in a budget conference now. It has been heartening to hear from Senators MCCAIN and COLLINS and many other Republicans who have chatted with me about why they believe we need to have a formal bipartisan negotiation move on this. Unfortunately, there is a small group of Senators who would prefer to throw up their hands and stall until we reach a crisis, when they think they can get a better deal.

Last week, I was home in my State, similar to most Senators, and I talked to a lot of Americans who don't understand that kind of approach. They run their businesses and help their communities and support their families by compromising every single day. They can't afford to wait to reach agreements until the very last minute, because when that happens, they have to deal with the consequences. But that is exactly what my Republican colleagues are doing to thousands of my families in the State of Washington. Because Republicans will not allow us to come to the table, the automatic cuts from sequestration are impacting everything from children who depend on Head Start to our national security. What is more, many of the same colleagues will try to tell you that sequestration is not impacting American families. As the Senator from Virginia just talked about, I can tell you firsthand that the impacts are real.

For thousands of families in my home State, these become a reality tomorrow morning. That is because furloughs for the Department of Defense employees begin this week—equivalent to a 20-percent pay cut for 650,000 defense workers nationwide. Bases in my home State of Washington are being affected, and the first furlough date at Joint Base Lewis-McChord in Washington State is tomorrow. So instead of going to work, thousands of workers in my State will go home. The 9/11 call center and the fire department will be understaffed. Airfields are going to be shuttered except for emergencies. The military personnel office is closed. The substance abuse center is closed. The Army Medical Center is going to close clinics, and even the Wounded Care Clinic is going to be understaffed.

I am reminded of one worker I met last week, Will Silba. Will is a former marine, an amputee. He works now as a fire inspector, and he told me that because of these furloughs he is going to have to get a second job. He is going to struggle with his mortgage payments.

While these furloughs are going to directly impact thousands of people and

civilian employees, the leaders at Lewis-McChord have made it very clear that the furloughs are going to hurt our soldiers. They are going to limit their access to medical care. They are going to cut back on the family support programs. They are going to make it tougher to find a job when they finish their military careers. Why? Because our colleagues refuse to work together. To me, this is unacceptable.

Because some Republicans would like to preserve the harmful cuts from sequestration despite these kinds of impacts, we have a \$91 billion gap between the House and the Senate appropriations levels for next year. If we do not resolve that gap, we are headed for another round of uncertainty and brinkmanship, another unnecessary burden on our economic recovery and the millions of Americans who are looking for work every day. Some of my Republican colleagues say they are fine with that. In fact, House Republicans are reported, right now, to be busy working on a debt limit ransom note—right now—and so far that ransom note sounds quite a lot like the Ryan budget. As you know, the budget we did pass here in the Senate was very different, but that is exactly why we have to resolve our differences in conference. That is where we come together in a public fashion and talk about our differences and work out agreements.

I believe we have an opportunity, a window of opportunity over the next few weeks to do what Americans across the country have asked us to do—compromise and confront these problems before we head back to our home States for the work period in August. We do not have a lot of time, but I am confident that if those of us who can see working together as a responsibility rather than a liability come to the table, we can get a fair bipartisan agreement.

By the way, I was very discouraged to hear just this week from some tea party Republicans—many of the same ones who are now blocking us going to conference—who are already talking now about shutting down the government in order to defund ObamaCare. Not only do they want to push us to a crisis, but they want to do that in order to cut off health care coverage for 25 million people and reopen that doughnut hole we know so much about, causing seniors to pay more for their prescriptions, and end preventive care for seniors, and the list goes on.

This is an absurd position. We should not be talking about shutting down the government. I really hope responsible Republicans reject this approach and work with us on real solutions, not more political fights. My colleagues and I are going to continue urging the Senate Republican leadership to end their tea party-backed strategy of manufacturing crises and allow us to do the work we were sent here to do and go to a conference. I urge them to listen not just to Democrats but to

many Members of their own party who want to get to a budget conference and allow us to get to work to solve the Nation's problems.

UNANIMOUS CONSENT REQUEST—H. CON. RES. 25

Today I come to the floor to ask unanimous consent that the Senate proceed to the consideration of Calendar No. 33, H. Con. Res. 25; that the amendment which is at the desk, the text of S. Con. Res. 8, the budget resolution passed by the Senate, be inserted in lieu thereof; that H. Con. Res. 25, as amended, be agreed to; that the motion to reconsider be considered made and laid upon the table; that the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and the Chair be authorized to appointment conferees on the part of the Senate; that following the authorization, two motions to instruct conferees be in order from each side: the motion to instruct relative to the debt limit and a motion to instruct relative to taxes and revenues; that there be 2 hours of debate equally divided between the two leaders or their designees prior to a vote in relation to the motions; that no amendments be in order to either of the motions prior to the votes; and that all the above occurring with no intervening action or debate.

I ask unanimous consent for that.

The PRESIDING OFFICER. Is there objection? The Senator from Florida.

Mr. RUBIO. Madam President, reserving the right to object, I do not oppose going to a budget conference with the House. I think I have shown, especially in the last week, a willingness and ability to compromise on important issues—one, quite frankly, very unpopular among people supportive of my candidacy—in my time here in the Senate when we dealt with the issue of immigration. My concern is that when this goes to a budget conference with the House, they will negotiate the debt limit—an issue that I believe is so monumental it should be debated on its own merits and by itself.

So what I am arguing for is a compromise. Let's go to conference but assure everyone here that this is not a conference that is going to deal with the debt limit issue. We need to deal with that issue separately.

I ask unanimous consent of the Senator on a compromise. I ask unanimous consent that the Senator modify her request so that it not be in order for the Senate to consider a conference report that includes reconciliation instructions to raise the debt limit.

The PRESIDING OFFICER. Does the Senator so modify her request?

Mrs. MURRAY. Madam President, I will object, but let me just say this. What the Senator is requesting is that we tell our conferees before they ever get to the conference committee what they can do on a specific issue. What I offered in my original offer is to have a vote on that, which is how we do this here. The Senator is requesting not



that we have a vote but that we have a demand.

I respect the Senator from Florida. He has worked very hard, as he stated, on immigration reform. He is working now to try to get the House to pass that. At some point they will go to conference. What he is saying is that when his bill goes to conference, what he wants to do is allow any Senator on this floor to make a demand of that conference committee before they get there—not a vote, not a majority vote, but a demand from a small minority of what is going to be in that conference. We cannot agree with that.

What I have offered is a vote on that, which is what we are—a democracy. You are allowed to vote, and if enough Senators agree with that position, that is what we would direct the conference to do. But this body is not built on a demand from one Senator or a small group of Senators on a conference before we go there. We are a democracy.

So I again object to his request as he said and renew my request, which will allow a debate and a vote on that issue he is requesting, as happens in a democracy.

The PRESIDING OFFICER. Objection is heard to the modification. Is there objection to the original request?

Mr. RUBIO. I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Florida.

Mr. RUBIO. How much time do I have remaining?

The PRESIDING OFFICER. Ten minutes.

Mr. RUBIO. Madam President, let me say at the outset on this debt limit issue that we have been told by everyone here that the debt limit is not going to be dealt with; they don't intend to deal with it; that, in fact, we have rules in place that prohibit that from happening. So if the intent is to say we are not going to deal with the debt limit, why not just put it in writing? Why not just agree to it? I think it raises suspicion that they refuse to take the debt limit off the table in writing in a specific motion, even though they told us that is not the case.

But I want to raise a couple of points in regard to all this debate we are having. We heard a lot of debate about the impact of the sequester on this country. I do not dispute that it will have an impact. In fact, I voted against the deal that actually gave us the sequester, and I voted against it because, while I believe deeply we need to constrain spending because we are spending a lot more money than we are taking in, about \$1 trillion a year more than we are taking in, borrowing about 40 cents of every dollar we spend in the Federal Government—for the folks visiting here in the gallery, you may be shocked to hear that. Every dollar the Federal Government spends, 40 cents of it is borrowed. When you borrow it, that means you have to pay it back with interest. That is your money.

That doesn't come from a tree. That is money taxpayers are eventually going to have to come up with. And for the youngsters here, I want you to understand it is primarily going to come from you in the years to come.

So the reason I thought the sequester was a bad idea is because that sequester is going after things that by and large are not the drivers of our debt. The drivers of our debt are certain programs that are built in a way that are unsustainable, important programs such as Medicare. I believe in Medicare. I support Medicare, as I tell anyone when they ask me about it. My mother is on Medicare. I don't want to see Medicare hurt or changed for her. But I also recognize that if Medicare is going to exist when I retire, we better start making some changes to it for future retirees, people 20 or 30 years from now. That is where we should be focusing our reform efforts.

We cannot get the other side to agree on any sort of changes. There was an effort in the House last year to try to do something very serious about that. They brutally attacked it. There was a reference to the Ryan budget a moment ago. The Ryan budget—I am not saying it was perfect, but it was the most serious effort yet in this Congress, in this city, to reform a program that is going bankrupt on its own.

I think the only thing worse than the sequester is to raise taxes to prevent a sequester because that will hurt job creation in America. The only thing worse than the sequester is not to have any spending reductions at all, which leads me to the point that was raised earlier saying that we are not going to agree to a short-term budget unless ObamaCare is defunded and that we are threatening a crisis by shutting down the government.

Let me say that one of the people who said that was me, so let me address that for a moment. Let me tell you what the disaster is. The real disaster is ObamaCare itself. In fact, it is such a disaster that the people who supported it are now delaying implementing portions of it. Just last week we were told that one of the key components of the law requiring that employers provide insurance—they are going to have to delay that by a year, conveniently until after the next election.

Here is the other thing we found out last week. I know that under ObamaCare, when you go in and say, I make so much money, you can qualify for the government to give you extra money to buy insurance. Guess what. They now admitted they have no way of verifying how much money you really make. Basically, it means people are going to get to show up and say, I only make \$20,000 a year, and get their subsidy, with no way to verify the truth about what they make.

It is not limited to that. The disaster that is looming with regard to ObamaCare impacts every single American. Here is a list of them that was re-

cently produced by the Heritage Foundation. They missed a bunch of deadlines.

Most states resisted Obamacare's call to create insurance exchanges, choosing to let Washington create a federally run exchange instead. However, a Government Accountability Office report noted that "critical" activities to create a federal exchange have not been completed and the missed deadlines "suggest a potential for challenges going forward."

That is right—you may have to go on a Federal exchange—including, ironically enough, the Members of the Congress and their staffs—and the exchange doesn't exist yet. You are going to be expected in a couple of months to sign up for something that doesn't even exist yet. That is one part of the disaster. There are many others.

The administration announced in April that workers will not be able to choose plans from different health insurers in the small business exchanges next year—a delay that [a liberal blogger] called "a really bad sign of ObamaCare incompetence."

Here is another one, the child-only plans—one of the things people were excited about. There was a drafting error in the law that actually led to less access to care for children with preexisting conditions.

A 2011 report found that in 17 states, insurers are no longer selling child-only health insurance plans, because they fear that individuals will apply for coverage only after being diagnosed with costly illnesses.

Basic health plan: DELAYED.

This government-run plan for states, created as part of ObamaCare, has also been delayed, prompting one Democrat to criticize the Administration for failing to "live up" to the law and implement it as written.

The early retiree reinsurance—it is broke.

The \$5 billion in funding for this program was intended to last until 2014—but the program's money ran out in 2011, two years ahead of schedule.

Waivers:

After the law passed, HHS discovered that some of its new mandates would raise costs so much that employers would drop coverage rather than face skyrocketing premiums. Instead, the Administration announced a series of temporary waivers—and more than half the recipients of those waivers were members of union health insurance plans.

It goes on and on. This thing is a disaster. I don't care about how you feel about it, there is an insurance crisis in America, let there be no doubt. People are struggling to find access to quality health insurance. We should deal with that, but this approach is a disaster. No matter how you feel about it, it is a disaster. It cannot be implemented in time. You don't think that is looming over our economy?

I just left a meeting with an owner of a chain of restaurants. They are worried about it. They don't know what to make of it. Why, if you ask what it is going to look like next year, they don't know. They don't know. We are in July already, folks. We are going to implement this? We are going to force this on our economy? You don't think that is a disaster? You don't think in the



real world—not in Washington or the think tanks—small- and medium-sized businesses and individuals are holding back on investing or holding back on making moves? You don't think someone who decided to leave their job, take their life's savings, and open a business because they believe so much in their dream—you don't think this uncertainty is hurting that from happening? It is.

You cannot grow your economy unless people are willing to start new businesses or grow existing businesses, and ObamaCare is keeping that from happening. That is the disaster.

Why would we fund a disaster? Why would we pay for something out of the American taxpayer's wallet we know isn't going to work? When they talk about shutting down the government and how it is going to be a disaster—ObamaCare threatens to shut down our economy. I am telling you this is a disaster. We should not fund it, and we should not have a temporary budget around here that gives money to this thing. It is a disaster, it will not work, and it is going to hurt people.

The other thing about this debt limit that I make such a big deal about—let me tell you why. We owe \$17 trillion, and that is bad, and it is bigger than our economy. Here is the worst part about it: There is no plan in place to stop that from continuing to grow. You heard right. There is no plan. This budget the Senate passed—I am glad we passed a budget—only makes it worse; it doesn't make it better.

Where is the urgency? What are we waiting for? This isn't going to take care of itself. We are not going to win the Powerball lottery and pay this thing off. When is someone going to step up and say it is time to solve it?

I have been here now 2½ years. If on the day I got elected you told me we would go 2½ years without seriously dealing with this, I wouldn't have believed you. I would have said: Look, I know it is going to be hard, but we have to do something. We are 2½ years into this, and they are saying: We are going to raise the debt limit, and we don't want any conditions. We don't want to deal with anything that fixes it.

People say: Well, the debt is something that is far off in the future. It is off in the future, but it is also happening now. Do you think when people decide to invest money to start a new business or expand an existing business—which is how you create jobs; that is how jobs are created in the private sector.

If you graduated college, went to school, got your degree, and now you can't find a job, I will tell you why you cannot find a job: The businesses that create those jobs will not create them until all of this is figured out. People do not want to risk their hard-earned and saved money in an economy that is headed for a catastrophe.

Look at what is happening in Europe now. Europe has a debt problem. You

know how they have had to deal with it? Disruptive changes in government and tax increases. If you think that stuff attracts investment in business, you are out of your mind. There isn't a chamber of commerce in the world that tells people: Come to us. Here we have high taxes and heavy debt that will make those taxes even bigger in the future.

The bottom line is that the debt limit and the fact that we don't have a solution for the debt is also the reason for the crisis. We need to begin dealing with this seriously and stop playing games. Someone has to draw a line in the sand, and I know many of my colleagues and I intend to do so every chance we get.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator withhold that suggestion.

Mr. RUBIO. Yes.

### RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:48 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Ms. HEITKAMP).

The PRESIDING OFFICER. The assistant majority leader.

### MORNING BUSINESS

Mr. DURBIN. Madam President, I ask unanimous consent that the Senate be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. NELSON. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

### SENATE PROCEDURE

Mr. NELSON. Madam President, I want to speak about a subject that is on the hearts of most of us now as we approach not what is a coming constitutional crisis, but what is already a constitutional crisis because this body is not functioning as the Constitution intended. The minority, under the rules of the Senate, is protected and has been.

In the early days of the Senate, there was no cutting off of debate. In the early 1900s, a level, a threshold of 67 was established in order to cut off debate. Then, after the abuses of that filibuster requirement to cut off debate in the abuses in the civil rights era, in-

deed, the threshold was lowered to what we have in the Senate rules today—60. But we are seeing that it is being abused.

Under the Constitution we have the checks and balances of the separate branches. But when a President is elected, the President is entitled to have the people he wants to advise him to be a part of his team to be confirmed. It has always been the practice under the Constitution to have, not a supermajority vote, as is required for treaties, but a simple majority vote in the approval of the nominations.

The issue in front of us is whether the President will be entitled to have approved by the Senate the people he has put forth to head the agencies and the Departments of his administration. That is what has brought us to the constitutional crisis where we are now finding ourselves ready to act.

Congress has failed to put aside political differences to find commonsense solutions not only on the issue of the approval of the President's appointments, but on so many of our Nation's pressing problems.

Let's start out with the charade that we call the sequester. The sequester is a meat cleaver approach to budgeting. I daresay in the minds of most of the Senators it was never intended to go into effect. It was the meat cleaver hanging over the head, a year and a half ago, of the appointed supercommittee that—after the initial \$1 trillion of spending cuts were made on the budget over a 10-year period, which was done—the supercommittee was to come along and work out deficit reduction with a target somewhere around \$4 trillion in total.

What was to encourage the supercommittee was this meat cleaver hanging over their heads, or guillotine hanging over all the heads that nobody wanted, which was cuts across the board without regard to programs—across the board in discretionary programs, defense and nondefense discretionary programs.

Such across-the-board budget cuts, is that the way to go about making proper appropriations decisions? Those kinds of meat cleaver approaches do real damage to people's everyday lives. In the long run, the sequester is certainly going to hurt our national defense, our national security, and our Nation's ability to compete economically with other countries. If we see these kinds of cuts continue in this ideological fashion without regard to programs, then we are going to be in serious trouble.

We can continue to have both sides of the aisle point fingers at each other, but isn't it about time we get rid of this approach to the budget—the sequester—and start talking about how we can get the job done?

Well, the ranking member of the Finance Committee is here. He is one of my dear personal friends. I believe he is very sincere, along with the chairman of the Finance Committee, to really

take on tax reform. Are we happy with the Tax Code we have? Do we think it has much too much complication? And couldn't its streamlining—particularly with tax expenditures, which are tax deductions and tax credits, and almost every special interest in the world has their own special tax expenditure—could we not clear out a lot of them, which produces revenue, and use that revenue in order to lower tax rates and also use some of it to lower the deficit?

Well, we need to close some of those loopholes, and I am hopeful, with the leadership of Senator BAUCUS and Senator HATCH, we are going to be able to do that. But there are a lot of other things in there.

It is no surprise that I have been speaking of subsidies that go to companies, such as oil companies, that have outlived their usefulness that were given a century ago in the Tax Code as incentives to drill for oil. Do we think oil companies need those financial incentives now? What about the offshore tax dodges?

I think it is also obvious that when you look at the Medicare drug program, you know the taxpayers of this country, through their government, got a break on the cost of prescription drugs that we supply to Medicaid and to the Department of Defense and to the Veterans' Administration. But when it comes to if you have been getting that price break on your drugs through Medicaid, but you now turn 65, and you get your drugs through Medicare, the U.S. Government does not get the break, the discount on the drugs through Medicare. The very same people who were getting them under Medicaid now are getting them by Medicare because they passed the threshold of age 65—same drug, same people; the government is paying it—but the government is paying a much higher price. That could be worth a savings of \$150 billion to the U.S. taxpayer over the course of a decade.

You do the math on just these few examples I have given in this short little speech, and it adds up to well over \$1 trillion. And that is just a starter. There are hundreds of billions of dollars more that might be saved by closing some of these tax loopholes.

I think we need to keep in mind that not all tax deductions are bad. Some serve very legitimate purposes. But here we are, and we come back to the gridlock we are experiencing. We passed a budget resolution in the Budget Committee. It passed out here on the floor of the Senate. The House of Representatives has passed a budget resolution, albeit much different than ours. The normal process around here is to try to work out our differences and to do it as ladies and gentlemen with comity. But we cannot even get a motion approved in order to go to a conference committee to work out the differences between the House and the Senate budget resolutions.

So I would continue to plead with our colleagues to allow this to move for-

ward. No less than one of the most stellar Members of this body, Senator MCCAIN, has called for the naming of the conference committee. My Republican colleague who helps me lead the Aging Committee, Senator COLLINS, has called for the naming of the conference committee.

So let's do it. Let's end the gridlock on this one little thing. Let's compromise. And let's start using some common sense. If we do, you will see a chorus of amens from our fellow countrymen.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

#### NOMINATIONS

Mr. HATCH. Madam President, last month I spoke here about the confirmation process and how the majority was committing filibuster fraud.

The leaders on the other side of the aisle, including the majority leader and the majority whip, voted for judicial filibusters more than 20 times by this point in the previous administration.

They succeeded. There were five times as many judicial filibusters at that time during the Bush administration as there have been today. Looking at executive branch nominations, those same Democratic leaders voted to filibuster President Bush's nominees to be Assistant Secretary of Defense and EPA Administrator, and twice voted to filibuster his nominee to be U.N. Ambassador. They must have thought very differently then about whether the President deserves his team. Their actions then spoke more loudly than their words do today whether they think all nominees do deserve an up-or-down vote.

The Senate recently confirmed the Directors of OMB and the CIA, the U.S. Trade Representative, the Secretaries of Energy, Interior, Treasury, State, Transportation, and Commerce this year by a collective vote of 816 to 61. That does not sound like a Senate that is in jeopardy or trouble. In fact, it does not sound like they even have a case to make to do what they have alleged they are going to do.

The Congressional Research Service says the Senate is considering President Obama's executive nominees faster than during President Bush's second term, but none of that is good enough for this majority. They not only want more, but it appears they are willing to get it by any means necessary.

According to media reports, the majority leader is being pushed by political interests to use a parliamentary gimmick to limit or abolish filibusters. In other words, his political base, especially Big Labor, wants him to put short-term partisan politics ahead of the integrity and tradition of the Senate itself. If simply saying that is not enough to show how dangerous it is, we are in more trouble than I thought.

Thomas Jefferson called the Capitol the first temple to the sovereignty of

the American people. The people established our Constitution with its separation of powers. They designed the legislative branch with an action-oriented House and a deliberation-oriented Senate. We call ours a system of government because it includes all of these parts designed to be different and yet to work together.

Many people bemoan the division and conflict in Congress, the partisanship and on and on. Yes, there will be conflict over the important issues facing our country. Men and women of different perspectives, views and ideologies and serving different States serve in Congress. But I always thought we should be of one mind about the long-term integrity of the system of our institutions.

For more than two centuries, the Senate has been designed to play its own particular part in the legislative process. Form follows function, they say. So our rules reflect our role. For more than two centuries the minority has had some basic rights in this body, including the right to debate. That right has always annoyed the majority and empowered the minority. I know that from experience, as I have been among the annoyed, just as today I am among the empowered.

The majority knows it too. A decade ago when they were in the minority they began for a time using that right to debate to defeat judicial nominees who otherwise would have been confirmed. Now back in the majority, they want to ban the very tools they found so useful just a few years ago. Now that the majority leader is done using the opportunity for extended debate, he wants to make sure no one else can use it.

Why? For one simple reason. Because they want their way every time. They think they are entitled to it, and if they cannot get it the old-fashioned way, by persuading their colleagues and the American people, then they will simply rig the rules.

This short-term power grab, however, will cause long-term damage to the Senate and to the system of government of which it is such a vital part. Do not think just because they say they are limiting it to the executive branch appointments, excluding judges, do not think that is not going to lead to all kinds of other obnoxious approaches toward the Senate.

A little dose of history provides a big dose of clarity for this debate. For more than a century the right to keep debate going belonged to each individual Senator. There was no rule at all for ending debate. A single Senator could prevent bills from passing by preventing debate from ending.

We have had a rule for ending debate for nearly a century. Today it is easier to end a debate than at any time since the turn of the 19th century—not the 20th century, the 19th century. Not only that, but the majority is using that rule more effectively today to prevent filibusters than the rule has been

used in the past. It is all there in the public record. When we vote to end debate, we prevent a filibuster. A higher percentage of votes to end debate has succeeded in recent Congresses than in the past.

To top it off, just a few months ago, the Senate overwhelmingly adopted two new standing orders and two new standing rules giving the majority even more power considering nominations and legislation. But using the rules to their advantage is not enough for the majority. Gaining even more power through those new orders and rules is not enough. Now the majority threatens to use a parliamentary maneuver to weaken or abolish the right to debate itself.

But as I said, the Senate rules reflect the Senate's role. Changing those rules, especially in the way the majority is talking about, means changing the Senate's role in our system of government. A few partisan victories simply cannot be enough to justify that.

The minority leader has faithfully reminded us of the majority leader's past promises not to change the Senate's rules or procedures except through the process provided for in the rules. On January 27, 2011, the majority leader said: "I will oppose any effort in this Congress or the next to change the Senate's rules other than through the regular order." My question is this: When the majority leader said: "I will oppose," did he really mean "I will lead"?

The integrity of this institution and the system with which it is a part should matter more than the politics of the moment. If our commitment to this institution and to keeping our word no longer matter, we will be breaking the trust of the American people and failing in our duty to them.

This must not happen. The Senate is a venerable institution. If the majority continues to go down the road they are going down, it is going to be much less venerable, and it is going to be a broken institution. Keep in mind, their decision, if they do choose to do this, will work against them someday.

I have to say that I am very concerned because I believe that not only is it wrong, what they are going to do, but it is based upon false premises. When the majority leader says we have filibustered hundreds of times, that is totally inaccurate, especially when the leader calls up a bill and files cloture immediately just to make it look like we are filibustering. We are fast moving away from being the most deliberative body in the world to one that is just run by the majority, similar to the House of Representatives.

I hope some of the wiser Senators on the Democratic side will prevail. Right now it does not look like they will. But I will tell you this, if we go down the road that the majority leader is talking about, this institution is going to be dramatically changed for the worse.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Madam President, I thank the Senator from Utah for his thoughtful remarks. I have been trying to think of a way to put in context what is at stake because the majority leader said in his remarks today: We have changed the rules 18 times. True. We have changed the rules a lot. But we are not talking about changing the rules of the Senate. We are talking about changing the Senate.

That is what the proposal is, changing the Senate from an institution that protects minority rights by requiring 60 votes out of 100 on major matters of importance instead of a majority of votes. You know we grow up and we go to first grade and we learn that the majority wins. So we get that ingrained in ourselves as we grow up in America. It is a good principle, the majority wins. It is a way to resolve disputes and work things out.

But from the very beginning of our country, our most thoughtful observers and visitors have looked at our country and said: But a democracy needs some protections for the minority, for the people with a minority view.

I have mentioned on the floor before that I have been reading Jon Meacham's book about Thomas Jefferson, about the conversation they had after dinner on February 15, 1798. Jefferson wrote about what Adams said to him. Adams said:

No Republic could ever last which had not a Senate. Trusting the popular assembly for the preservation of our liberties is unimaginable.

"Trusting a popular assembly for the preservation of our liberties." What did he mean by that? What he meant by that is that the passions in our country—and they particularly happen that way today because of the Internet—can suddenly grow very strong. They happened back at that time in France with the French Revolution, where the population got excited and began to behead people in connection with the French Revolution.

So popular passions can run strong. Our Founders said: We want a House of Representatives that reflects those popular passions, which is why when you go over to the House, they have a Rules Committee. Whoever wins the House by one vote gets nine of the seats and whoever loses gets four of the seats to make it clear that the party that has four of the seats does not have anything to say about anything, so they can bring it up on Monday and pass it on Tuesday.

That is what a popular assembly can do. So Adams was saying to Jefferson: We need another body. We need a Senate that is not so responsive to the popular passions. President Adams and President Jefferson said at the beginning of our country that they did not believe a Republic could stand without such a Senate. That is what they said then. Our most famous visitor to the United States was Alexis de Tocqueville, a young Frenchman who came in the 1830s.

He wrote a book, "Democracy in America," which is probably the best book ever written about democracy in America. He said in this that there are two great dangers he saw in our future democracy. This is when it was very young. One was Russia. That was a prescient comment. But the other was the tyranny of the majority. That is what de Tocqueville said.

The great danger to our democracy is the tyranny of the majority. That means a majority can run over you with a one-vote margin. What does that mean today? Let's say you care about abortion rights. Let's say you care about gay rights.

Let's say you care about climate change. Let's say you didn't support the war in Iraq, you didn't support the war in Afghanistan. Let's say you don't like government snooping, but the majority does. The majority has a view that is different from your view, so they can run over you—in the Senate they can't because they will have to persuade at least 60. It will take some time to do it, and it doesn't always work. You have to stop and think about any issues.

The House can say: No secret ballot in a union election, and they can pass it in a day. It will come to the Senate, and we will say: Let's think about it. We will think about it even if the Democrats are in charge and they are in favor of no secret ballot in a union election because we protect the rights of working men and women across the country who may be in the minority. But we have to stop and think about whether we want to abolish the secret ballot in union elections.

What the majority leader is proposing doing next week is not just changing a rule, he is changing this institution so that whoever has a majority of one can do anything they want to do, anytime they want to do it, and can run over any minority. It doesn't make so much difference that you run over a person in the minority in the Senate—you know, we are just individuals. But what about the views we represent? What about the views of the farmers in North Dakota, mountaineers in Tennessee, or the civil rights workers in Alabama? What about the people in the 1970s who opposed the Vietnam war? The majority? The majority ran over it.

People who are accustomed to being in the minority know the advantage and the importance of having protection of minority rights. They know—and they have studied American history—that the chief defender of minority rights in the history of our country has been the Senate. This is what the majority leader proposes to change. He proposes to make this place like the House, where a freight train can run through it overnight and change abortion rights, change the war attitude, change civil rights, change environmental policy. One vote can do it. Run the train through the House. Run the train through the Senate. Today it

might be a Democratic train. Tomorrow it might be the tea party express.

Our friends on the other side might wish to think about that. I have some very creative colleagues over here. I will bet they could come up with a pretty good agenda of things we would like to do if we had 51 votes and we could do it anyway.

This is not about a rules change. This is about changing the nature of a Senate that John Adams, Thomas Jefferson, George Washington, and the Founders of our country created to be an alternative to a popular assembly and that every majority leader in our history has, in the end, supported in this way.

We should not take this lightly—especially if you are an American person who has an unpopular view. If you feel as though you are in the minority, if you feel that a majority might not agree with you, might even run over you, you do not want the Senate to suddenly be a place where a freight train could run right through it overnight.

You may say: Well, we have the President and the White House.

You may. You do today. You might not tomorrow. You might not tomorrow.

When I came to the Senate 10 years ago one party had both the Senate, the House, and the Presidency. What if we were 10 years ago and we could run a freight train through the House, to the Senate, and send it down to President Bush? We might say that no State in the country—every State in the country must have a right-to-work law. We believe in right-to-work laws. We might have new rules on public unions. We might have different ideas on abortion. We might have different ideas on climate change. If you are in the minority, you wouldn't be able to stop us. You wouldn't even be able to slow us down for a good conversation. We could just run right through town.

Nearly one-half of this body is in its first term. More than half of my Democratic friends have never been in the minority. I have been in the minority in a variety of ways in my lifetime, and I want some protection—more than just from the popular assembly that might run through.

That is why I said this morning that I hope very much that the Democratic leader will accept the request from those of us on the Republican side for all of us Senators to meet together in the Old Senate Chamber where we can meet privately, where we can talk face-to-face.

We can say: We need to understand how in the world the Democratic side could want to change the character of the Senate in this way when in 2 years they could be on the other side. What would make you so angry that you would want to do that?

If you would say to us, you have been filibustering our nominees, we would say to you, I guess you know that none of your nominees have ever been de-

feated by filibuster. I guess you know that—except for two circuit judges. And you started that because you did five of ours.

You will say: Well, you have been delaying our nominations.

We will say: I hope you know that the Congressional Research Service and the Washington Post say that President Obama's Cabinet nominees have been moving through the Senate more rapidly than President Bush's did and President Clinton's did in their second terms. I hope you know that.

You may say: But you have been holding people up for years.

We will reply: I hope you will look at the Executive Calendar.

It is on everybody's desk here. This is the list of people who can be confirmed in the Senate. How do they get on the Executive Calendar? They come out of committees. Who controls the committees? Democratic majorities. If there is someone who hasn't been confirmed, put him on the calendar. It is your committee that can do it.

Once they get on the calendar, how do they get confirmed? Only one person can manage that schedule—the majority leader. All he has to do is say: I move the nomination of Jacob J. Lew, of New York, to be U.S. Alternate Governor of the International Monetary Fund. He has been on the calendar since April 16, 2013.

You may say: There is an objection to that.

We will say: So what? The majority leader can bring it up, and under our rules we can ask for a 60-vote vote on Mr. Lew to the International Monetary Fund.

He is already in the administration, so that probably wouldn't happen, but let's say it did. The majority leader can bring it up on Monday. We would vote on Wednesday. He would get 60 votes, and then he would be confirmed. That would take one of the 24 people off of this Executive Calendar.

You might say: Well, they have been waiting for years.

We might say: Wait a minute, I have got it right here. The one who has been waiting the longest came to the floor February 26, 2013. That was 4 months ago. There is no one here who has been waiting longer than 4 months, who has been here waiting for us to do something about it. The only one who could move somebody off this calendar to a vote is the majority leader sitting right over there, so what are you talking about?

This is what we would say to you.

You must be angry about something else or you wouldn't be thinking about changing the character of the whole Senate because no one has been denied their seat by filibuster except a circuit judge, and you set the precedent for that. There is no one left to confirm except these nominees for the National Labor Relations Board that President Obama made unconstitutionally on January 24, 2012.

The Republican leader said: You have a Labor Secretary who is controversial.

We all concede that, but the majority leader hasn't moved that we have a vote on him. He has been reported since May; he has been sitting here since May. The majority leader could have been brought him up.

There is a lady nominated for the Environmental Protection Agency. Bring up her nomination. Let's vote on it. There are a couple of other controversial nominations, but all we have to do is vote—except on these unconstitutional nominees.

What do we do about them? Let's make clear what happened to the National Labor Relations Board. In December of 2011 the President sends us two nominees to the National Labor Relations Board. This is the way it is supposed to happen. Their papers then come over to the Health, Education, Labor and Pensions Committee. Senator HATCH used to chair that. I am on that committee now as a ranking member. Before the papers from the White House even get to the committee, the President recess-appoints them. In other words, he used his power to appoint these persons to the NLRB during a recess when the Senate was in session. How do we know it was in session? It was in session, in a pro forma session, which is a device invented by the majority leader, Senator REID, when George W. Bush was President to keep President Bush from making recess appointments.

President Bush didn't like that, these 3-day pro forma sessions, but he respected it.

He said: Our Founders didn't want a king. They created separation of powers. That means checks and balances. I am the President, but I can't do everything. There is Congress over here, and there is a bill of rights over here.

President Bush said: I don't like what Senator REID did. He created these pro forma sessions so I can't make a recess appointment, but I will respect that.

Senator REID has a pro forma session when President Obama is in, and President Obama doesn't respect it and appoints two people. They are still there. The Court of Appeals for the District of Columbia has ruled that unconstitutional, as has the Third Circuit Court of Appeals—two of the highest courts in the land—and they are still there. They are still there making cases unconstitutional. They have decided 1,031 cases, all of which will be subject to being vacated if the Supreme Court agrees with the Federal courts. We cannot ignore that in the Senate if we wish to preserve the principle of checks and balances in the United States.

I mentioned at the beginning that I like to read history. I said this on the Senate floor, and I will read it again and then conclude because I know other Senators are here.

I was reading Jon Meacham's book about Thomas Jefferson, which I mentioned, and John Adams and Jefferson and how changing the Senate, not changing the rules—but if you change

the Senate rules in this way, that means that the majority, on any day, any year, could come through and do anything it wants do.

They might decide: We don't like the gas in North Dakota, or we don't like the corn in Tennessee. So we are going to change the rules so we can have an advantage that 51 of us can do something about.

They could do that any day. Do it now; do it then.

I mentioned that history. I mentioned de Tocqueville's history. But here is the last piece of history I will mention once more. This is chapter 7 of Senator REID's book in 2007. Chapter 7 is entitled "The Nuclear Option." I had just come to the Senate. He talks about me in this chapter and gives me some credit for the gang that was formed to preserve the Senate at the time when another majority leader was trying to change the character of the Senate.

I see the distinguished majority leader, so I will defer to his comments. Maybe it is appropriate for me to read them. Senator REID wrote in 2007:

Peaceable and productive are not two words I would use to describe Washington in 2005.

I just couldn't believe that Bill Frist was going to do this.

The storm had been gathering all year, and word from conservative columnists and in conservative circles was that Senator Frist of Tennessee, who was the majority leader, had decided to pursue a rules change that would kill the filibuster for judicial nominations.

This is Senator REID's book. It is an excellent book, and I appreciate being mentioned in it.

Senator REID continues:

And once you opened that Pandora's box, it was just a matter of time before a Senate leader who couldn't get his way on something moved to eliminate the filibuster for regular business as well. And that, simply put, would be the end of the United States Senate.

I believe that. I believe it would be. It is not a mere rules change. Anytime this body changes its rules in the middle of a session without following the 67-vote rules cloture requirement, anytime it does that, it doesn't matter what it is for, it could do it again for a matter of precedent. If it does it for judicial nominations, the importance of the change is not whether it is a good idea to have an up-or-down vote on judicial nominations, the importance of the change is that with 51 votes you can do anything you want at any time. That, in de Tocqueville's words, in his foresight and his prescience in the 1830s, takes away from the people of the United States their greatest protection of their liberties because it encourages the tyranny of the majority.

I yield the floor.

The PRESIDING OFFICER. The assistant majority leader.

Mr. DURBIN. Madam President, I have great respect for the Senator from Tennessee. He is my friend. We have worked together successfully and I

hope we will in the future, but I would take exception to his conclusions about the current status of the Senate.

I have been in the Senate—now my 17th year. I have seen this institution change dramatically—dramatically—in 17 years. We have faced more gridlock, more wasted time than I ever imagined could occur in this great institution. It has become commonplace for us to face filibuster after filibuster after filibuster.

People at home who would turn on C-SPAN to watch the Senate Chamber would have to get close to their television screens and look to see if there was any evidence of life on the floor of the Senate. Are those people actually moving? Are they awake? We go on for 30 hours at a time doing nothing around here. Why? Because we are facing a record number of filibusters from the other side of the aisle.

Time and again, when we have important issues come up, they ground to a halt for 30-hour periods of time. We are lucky to do one or two things of substance a week. Oh, there are exceptions. A couple weeks ago we did an immigration bill. I thought it was one of our better moments. But it was a rare moment in the Senate.

Too often now we are facing filibusters on the President's nominees. Make no mistake, President Barack Obama won the election on November 6 last year. Some on the other side of the aisle are in complete denial of that reality. Winning that election, this President has a responsibility to lead this Nation. He wants to put together a team to lead. He brings the names to the Senate for confirmation, but time and again they are facing filibusters from the Republican side of the aisle.

There is one that even precedes the last election. Richard Cordray, who was Attorney General of the State of Ohio—an extraordinarily gifted public servant—was chosen by President Obama to head up the Consumer Financial Protection Bureau. This is the only consumer protection bureau in the Federal Government. It is an important agency. We created it with the Dodd-Frank financial disclosure reform bill. For more than 2 years—more than 2 years—Mr. Cordray's nomination has been held on the floor of the Senate by the Republican minority. That is unacceptable and it is fundamentally unfair.

No one has ever raised a question about this nominee's competence or about his integrity. Yet they will not approve him because they do not like the notion of a consumer protection agency. That is it. So to stop the agency from functioning they are going to stop this appointment by President Obama—for 2 years.

The National Labor Relations Board sits down in judgment of labor practices across America for the safety of our workers, the organization of workers. It is an important agency. But in the words of former Senator Dale Bumpers, there are some on the other

side of the aisle who hate the National Labor Relations Board like the Devil hates holy water. They do not want to see it exist, but they can't abolish it. They know that. So they stop it from having a functioning majority. They stop nominees the President submits to fill the vacancies at the National Labor Relations Board time and time again.

The same thing is true when it comes to the Bureau of Alcohol, Tobacco, Firearms and Explosives as well. This is an agency opposed by many in the gun lobby. So since the time we have said that agency shall be filled by senatorial appointment, there has never ever been a person appointed.

It is the approach of those on the other side of the aisle to stop agencies from doing their work. This has to come to an end. I don't want to see this happen in the Senate, this confrontation over rules, but I don't want to see the current situation continue either.

Earlier this year Senator HARRY REID, the majority leader from Nevada, met with the Republican leaders, sat down and worked out a bipartisan agreement to avoid what we are facing right now. He was criticized by many Democrats who said: Come on, Harry, they are just leading you along; they are not going to work with you. You will find out, if you don't change the rules of the Senate, you are not going to get the job done.

But HARRY REID said: I would rather try to do it on a bipartisan basis by agreement. He made that effort, and it didn't work. Today we find ourselves in the situation with key executive appointments being stalled and held up.

Listen to this: Gina McCarthy was nominated by President Obama to head the Environmental Protection Agency. What is her background? Her background was serving as head of the EPA in the Commonwealth of Massachusetts—the State of the Presiding Officer—under Governor Romney. She was Governor Romney's cabinet official for the EPA in Massachusetts. She not only has credentials, she is clearly bipartisan in her approach. So her name came before the regular Senate process. What did the other side do? They submitted a few questions for her to answer. No, not just a few, they broke all Senate records. They gave her a list of 1,100 questions to answer before they would consider her nomination. That is what we are up against—clear tactics to delay and stall even good people from serving, holds on nominees that go on indefinitely. These sorts of things have to come to an end. If we are going to end the obstruction in this Senate, if we are going to give to the President the power and the authority to lead this Nation, as he was elected to do, the Senate can no longer stand as a blockade and obstruction to that exercise of authority granted to the President by the people of the United States of America. That is what this is about.

A number of my Republican colleagues have reached out to me in the

last few days saying: Is there a way to avoid this? There is. There is. If we come to the point where we can sit down and work this out together, resolve these nominees, all the better. It would be a good day for the Senate if it could be achieved. But the notion we are going to walk away from these Presidential nominees or other key nominees in the future isn't fair. I invite my Republican colleagues to vote no if they disapprove of the President's nominees. That is their right and it is their duty. But to stop the Senate from even coming to a vote on these nominees has gone on for way too long.

I urge my colleagues to try to find some way to resolve this issue. But if we can't, let's end the obstruction in the Senate and make sure the rules reflect the reality that a President should have the executive appointments he needs to lead this Nation.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. WARREN). The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. CORNYN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CORNYN. Madam President, I know we have been talking about the nominations process here on the floor and in caucus meetings, but I think it is worth reviewing the facts and comparing President Obama's nominees to how nominees of President Clinton and President George W. Bush have been treated, because I think there is broad misunderstanding. And, of course, when you don't know what the facts are—or the facts you truly believe in are wrong—then you are going to reach the wrong conclusion.

I think a fair look at the facts will demonstrate that President Obama and his nominees have been treated more than fairly. As a matter of fact, 1,560 nominees of President Obama have been confirmed during the 4½ years he has been President, and 4 have been rejected. That is not a bad ratio, 1,560 to 4.

When you start looking at how long it has taken for the President's Cabinet nominees to be confirmed, President Obama's Cabinet nominees have waited, on average, about 51 days from the time they were nominated until the time they were confirmed. For President George W. Bush it was 52 days, and for President Bill Clinton it was 55 days. So certainly President Obama has nothing to complain about, at least relative to President George W. Bush and President Clinton in terms of the amount of time it has taken for his nominees to be voted on by the Senate.

As far as judges are concerned, there have been 199 of President Obama's nominees confirmed to the U.S. District Court; only 2 of them have been defeated. That is a 99-percent success rate, which I think is pretty good in anybody's book.

President Obama has had 28 judges at the district court, circuit court, and other article III courts, so 28 for President Obama and 10 for President George W. Bush at this same point in their Presidency.

Someone once said that facts are stubborn. But if you acknowledge the facts, it is hard for me to understand where this sense of outrage and urgency comes from with regard to the President's nominees.

Indeed, the renewed sense of urgency of our colleagues across the aisle to change the longstanding rules of the Senate is based either on a misunderstanding of the facts or—I am sorry to say—willful ignorance is the only other alternative.

So this is a manufactured crisis with no grounding in objective reality. That is about the nicest way I can say it. The facts show that President Obama's nominees have moved through the Senate at a pace quicker than his predecessors.

So what about the nominees to the National Labor Relations Board? These are a special case, because the Circuit Court of Appeals in the District of Columbia found that the President exceeded his constitutional authority to make an appointment to these NLRB positions in a reported opinion from the court. But—this is important—it wasn't because Congress or the Senate denied the President his choice for these NLRB appointees. In fact, the President nominated them on December 15, 2011, right before Christmas. So the President nominates them right before Christmas, on December 15, 2011, and the President recess-appointed these same nominees on January 4, 2012.

What was so astonishing about that is the paperwork for the nominations hadn't even made its way over to the Senate, and the committee of jurisdiction had not even had an opportunity to have a hearing on these nominees. But in spite of that, the President sought to circumvent the advice and consent function for the Senate that is written in the U.S. Constitution and make what he called a recess appointment.

Another notable fact about that is the President himself decided—not the Senate—when we were in recess, leaving the Court of Appeals, when they reviewed this recess appointment and holding it unconstitutional, to say there is no real difference between what the President did in terms of determining the Senate was in recess and deciding to do it while we were breaking for lunch, and held that it was not constitutional. So Senators were not even given a chance to review his nominees to the National Labor Relations Board, much less block them.

After the court ruled these appointments unconstitutional, the President renominated them this past February. They were reported out of the committee in May, and due to the inaction of the majority leader—who is essen-

tially the traffic cop for the Senate floor—they haven't even been put up for a vote by the majority leader.

This is another important fact that I think most people don't fully appreciate. If I wanted to propose a nominee, I wouldn't have any standing to do so. It is the majority leader of the Senate, representing the majority party, who is the one who determines when these nominees will come up for a vote. So to say that somehow it is the minority's fault these individuals haven't been put up for a vote completely distorts how the Senate operates and is a disingenuous approach, to say the least.

We should recall that Republicans and Democrats came to a genuine compromise on the matter of nominations at the beginning of this Congress and a deal was struck: In exchange for Republican support, the majority leader gave his word here on the Senate floor that he would not attempt to change the Senate rules other than through regular order.

What that means, as the distinguished Senator from Kansas, the ranking member of the Rules Committee, knows, is going through the Rules Committee and coming to the floor, with 67 votes, to change the Standing Rules of the U.S. Senate. So the majority leader gave his word that he would not try to invoke the so-called nuclear option—which we are now threatened with—but would, rather, seek to change the rules through the regular order, which would require 67 votes on the Senate floor.

As it turns out, Senator REID is apparently willing to go back on his word and is now poised to break the rules of the Senate in order to get his way, in order to change the rules.

We have questioned many of our colleagues about, Why would there be such an extraordinary power grab and breaking of one's word when it comes to how the rules changed, and wondered, what is the rationale for this?

When we have gone through the same facts I described earlier, which show President Obama's nominees have been treated at least as fairly—or even more fairly, one could argue—than President Clinton and President George W. Bush, our Democratic colleagues have said, Well, this is a narrow, modest change that would only apply to nominees to positions in this administration.

That is not the way the Senate works. If you break the rules in order to change the rules, in this instance, there is a slippery slope, to say the least, to extend this same practice not only to executive nominations but also to Federal judges and to ordinary legislation, which would allow the tyranny of the majority and deny the minority an opportunity to influence ordinary legislation or to make sure its voice was heard when it comes to nominees. So the argument that this is some sort of a narrow fix designed to break some imaginary logjam with regard to this administration's executive nominees is false.



The fact is, if the majority leader goes through with this nuclear option, as it is called, he will have set a new precedent in the Senate—one that says it is permissible to break the rules of the Senate at any point simply to get your own way, if the majority has the gumption to do it.

I hope the majority leader is aware of the magnitude of this decision. Even more importantly than that, I hope Members of the Democratic caucus understand what this means.

I have been here long enough to have been in the majority and the minority. I can tell you that being in the majority is a lot more fun. But I can also tell you that majorities and minorities are fleeting. The shoe will be on the other foot. It is simply shortsighted and, I believe, an abuse of our process to try to jam these nominees through based on some manufactured and imaginary crisis and change the Senate as we know it forever.

I hope the majority leader understands the consequences will forever alter the nature of this institution—and not one based on just the rules but based on the relationships that are so important to getting anything done here.

We all understand the rules are important. But fundamentally, the way the Senate operates—regardless of whether Republican or Democratic, regardless of where we come from—is your word is your bond. We have to be able to believe it. No matter what their political differences may be, when colleagues across the aisle give their word, you have to be able to depend on it. And if we can't depend on your word and we can't depend on the majority leader's word when he said he won't invoke the nuclear option, it forever undermines the important relationship and bonds of trust and confidence we should be able to have in this institution.

Just to go over a few other short points:

According to the Congressional Research Service, the Senate is considering President Obama's executive nominations faster than any other recent President. I talked about that recently. But here are some of the President's Cabinet nominees who have been confirmed recently:

The Energy Secretary, confirmed 97–0. The only reason we had to vote on it is because the majority leader finally decided to put that nomination on the floor. It was unanimous, 97–0. Everybody who was here voted in favor of that nomination.

The Secretary of Interior was 87–11; Secretary of Treasury, Jack Lew, 71–26; the Office of Management and Budget, 96–0; Secretary of State John Kerry was confirmed 94–3—and he was confirmed only 7 days after the Senate got his nomination; the Administrator for the Centers of Medicare and Medicaid Services was confirmed 91–7; the Chair of the Securities and Exchange Commission was confirmed by voice vote.

There wasn't even a recorded vote. That is essentially a unanimous decision of the Senate; Secretary of Transportation, 100–0; Secretary of Commerce, 97–1.

It is worth recalling some of the words that were spoken by different Members of the Senate, because this is the kind of thing that will come back to haunt you if you flip-flop and take a different position later on.

This is Senator HARRY REID, December 8, 2006:

As majority leader, I intend to run the Senate with respect for the rules and for the minority rights the rules protect. The Senate was established to make sure that minorities are protected. Majorities can always protect themselves, but minorities cannot. That is what the Senate is all about.

Then there is the majority whip Senator DURBIN. This is April 15, 2005:

Those who would attack and destroy the institution of the filibuster are attacking the very force within the Senate that creates compromise and bipartisanship.

Well, if that is true—and I agree it is true—why in the world would any Senator vote to destroy the very force within the Senate that creates compromise and bipartisanship, particularly when we are making decisions here that affect 319 million Americans.

Then there is the President of the United States when he was in the Senate, April 13, 2005. Then-Senator Barack Obama said:

If the majority chooses to end the filibuster, if they choose to change the rules and put an end to the democratic debate, then the fighting, the bitterness, and the gridlock will only get worse.

I realize we are passionate about our positions on the various issues that come before the Senate, and that is entirely appropriate. We all have convictions about these important issues. But this is the only place perhaps left in the country, I believe, where we can actually debate these in an open and responsible way and be held accountable by the people who send us here—in my case, 26 million Texans.

But if we are willing to engage in this sort of shifty behavior, if we are willing to break our word in order to get momentary political advantage, then I think the public's confidence in the Senate is going to be completely undermined, and we will have lost our effectiveness. Also, perhaps just as significantly, the very bonds of trust that are so important in order to get things done around here will have been broken.

For what? For a temporary advantage over five or six or seven executive nominees. I daresay if Senator REID had put these nominations on the floor, we would have seen the vast majority of them confirmed a long time ago. The only reason they were not is because he chose not to do so. What he has done is to put them on the floor now, in this period of time before the August recess, to create a manufactured crisis so he can then invoke the nuclear option and somehow convince Members of his

own caucus that they ought to be party to breaking the Senate rules in order to gain temporary advantage. It is incredibly shortsighted, and I think it will exacerbate the gridlock and the divisions here rather than help us try to find ways to build consensus and work together in the best interests of the American people.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Madam President, thank you for being able to maintain order in this very crowded Chamber.

It should be a crowded Chamber. It is not. I say it should be because this should be a required debate. As a matter of fact, we should have had the debate.

I am the ranking member of the Senate Rules Committee. The distinguished Senator from Texas just pointed out if we went to regular order, we would be having a meeting of the Rules Committee, having a very interesting debate, a very educational debate. I think especially for the class of 2010 and the class of 2012 on the majority side, who did not have the advantage of listening to Bob Byrd's lecture to every class that came in, his sermon to every class that came in—we all became born again to our responsibilities as Senators, seeing the light with only his advantage of being both in the majority and the minority. I regret that is not the case. I regret we are not in the Rules Committee.

I rise, like the distinguished Senator from Texas and others who have spoken about this, our leader, Senator ALEXANDER in particular, giving us a real history on what is going on here or what is not going on. We are trying to discuss the so-called nuclear option that the majority leader reportedly wishes to employ.

We are apparently brought to this point as a result of the leader's frustration. I was here when, obviously, he was simply frustrated with the pace of the Senate and how the Senate operates. This really comes down to the NLRB and the appointments to the NLRB and the fact that two courts found these appointments were illegal. That is what our side objects to. It is not especially to the appointments.

Apparently, we are going to have a cloture vote on it, and apparently the nuclear gun is cocked and ready to be pulled. There is a country western song, "Don't take your guns to town, son. Leave your guns at home." HARRY, don't take that nuclear gun to this body. Take it back to Searchlight, NV. Put it back in its holster if in fact the nuclear gun has a holster. That would be my advice.

I would say this about the majority leader. I have known him for a long time. We worked together on the Ethics Committee—and I mean we worked together. As majority leader I have had a good relationship with him. He has a good sense of humor. Sometimes that doesn't show, but he actually does.



I remember one time he was conducting a mini-filibuster. I don't remember the issue. I was the Acting Presiding Officer. I was listening to him talking about how rabbits were eating the cactus in front of his home in Searchlight, NV; whereupon I took the floor and we engaged in quite a colloquy about rabbits and cactus and not to sit on cactus. There are a lot of cactus in the world.

This is probably the biggest one we are attempting to sit on, and I just don't think it is a good idea.

The majority leader was a boxer. He was a good one. His hero is Smokin' Joe, Smokin' Joe Frazier. So when I talk to him, I call him Smokin' Joe. My appeal to him, if he is listening—he probably isn't, but if he reads about this, or if his staff tells him, tell him your old friend from the Ethics Committee had some advice. Smokin' Joe used to wait until the late rounds. He was in better shape. But he knew when to hold them and when to fold them. He was a great champion.

We do not need to go down this road. We really don't need to go down this road. Apparently, the majority leader has determined that—and this is my view—he will have to destroy the Senate in order to save it.

Those are pretty strong words. Those are harsh words, but I intend them to be. We should not be confused about this. By breaking the rules to change the rules the majority seeks to destroy what has made the Senate great, unique in the history of the world. I am repeating the advice we all got from Senator Byrd, the institutional flame of the Senate. Again, every time a new class came in, he would give his sermon or his lecture or his advice or his counsel, and we all took it, regardless of whether we were Democrat or Republican.

The Senate has always been the one place where all Americans could be assured they would have a voice. Every American, no matter what State they happened to live in or what political party they belonged to, knew they would be represented here. Kansas, Massachusetts, wherever; they knew they would be represented. Minority views were respected. Even if your party was not in power, you still had a voice.

Unfortunately, if you pull that trigger on that nuclear gun, the majority will abolish that. If you take that step, that is surely going to lead to complete control of this institution by the majority. That has been predicted by virtually everybody who has spoken, and I intend to quote a lot of majority leaders and a lot of people in the Senate on the Democratic side who have pointed this out.

I know some on the other side, especially those who have never been in the minority, will seek to minimize the import of what they are doing. Oh, it is just a small change. They will claim what they are trying to do is very limited, applying only to executive nominations.

I wish I had a chart. But if you look at the difference of 68 percent on civilian nominations that were confirmed in past administrations in the 106th Congress, and you are talking, 68, 72, in that neighborhood, and then you move clear up here to the 112th Congress, and President Obama is 82 percent, 86 percent—what is the deal? Other than being upset about the NLRB.

Make no mistake. The change itself will be less important than the manner in which it is imposed. Let me repeat that. The change itself will be less important than the manner in which it is imposed. If the majority decides to write new rules with a simple majority vote, regardless of the issue, ignoring the existing rules that require a supermajority to achieve such a change, it will put us on a path that will surely lead to total control of this body by the majority.

As of today there is only one House of Congress where the majority has total control. The majority wishes, apparently, now, there were two—or there will be two.

We do not have to wonder what the Senate will become if they get their wish. We only need to look to the House of Representatives. We will become the Senior House. I don't know about the Upper House or the Lower House—perhaps we will be the Upper House—but we will become the House.

I know that doesn't mean much to many of my colleagues who have never been in the minority or served in the House. I served as an administrative assistant to a wonderful House Member for 12 years and was in the House for 16 years. I have the privilege of now serving my third term in the Senate. I have been in the majority and I have been in the minority. The Senator from Texas is surely right, the majority is better.

Many of you folks who should be here have never served in the House. Many of you have never served in the minority. I have done both, as I have indicated. Let me explain what it means to serve in the minority in the House to those who have never had this wonderful privilege.

In the House, no bill comes to the floor without a rule. The rule governs the length of debate and the amendments that will be considered. If you want to even speak on the bill, you have to get the bill manager to give you some of the very limited time available under the rule. If there is not enough time, you will not be able to even speak on it.

The majority in the House writes the rule, and they decide how much time they will allow. The rule also determines what amendments will be considered. If the rule does not allow for consideration of your amendment it will not be considered, it will not be debated, and it will not be voted on. The majority in the House decides what amendments will be considered.

If you are a member of the majority, they might allow consideration of your amendment—if you are in good stand-

ing with the Rules Committee. If you are a member of the minority, you can forget about getting a vote on your amendment. If the majority does not want to allow it, it will not happen. As a member of the minority there is nothing that you can do about it.

I know about this. I remember when I first went to the House Rules Committee under a very determined, aggressive chairman of the Rules Committee. I had an amendment that I thought was well placed, well taken, pertinent. It was on agriculture. It was on something that dealt with the farm bill or agricultural program policy. But I was a Republican. I went in and I thought this amendment would be considered under parliamentary procedure whether it would be germane or not. Guess what. It was just a rehash of a partisan debate because it was not bipartisan. We had a lot of bipartisan support for it.

So my amendment was not allowed. Then I figured it out. Charlie Stenholm was from Texas—well, he still is from Texas and he is still active in the agriculture community. Very active, very respected. Charlie wanted the same amendment. So I finally figured out, let Stenholm introduce my amendment, but don't tell them it is my amendment.

So Stenholm introduced my amendment and then as soon as it was approved by the House Rules Committee, then it became the Stenholm-Roberts amendment. If it passed, obviously, it became the Roberts-Stenholm amendment in Kansas and the Stenholm-Roberts amendment in Texas, and that is how we got things done. So we had the Stenholm-Roberts for quite a few years. I never went into the Rules Committee because if I did I knew I would lose. Boy, talk about one-party rule.

We don't want to do that. Guess what. We had a revolution back in 1994. I became chairman of the Agriculture Committee. All of a sudden the Stenholm-Roberts amendment became the Roberts-Stenholm amendment, and that is how it worked in the House of Representatives.

I don't think we want to do that. It is precisely for this reason that many Members of the House choose to run for the Senate. That is why I did it. The Senate is supposed to be different. Here, if you want to be heard on a bill, it will happen. We haven't been living up to that recently, but that is how the place is supposed to work. In the Senate the Senator's right to speak is not supposed to depend on the whim of the majority. Now it is on a whim and a prayer. That is why people run for the Senate. That is what has distinguished this body from the House since we first convened in 1789.

The majority, unfortunately, wants to erase that distinction. It wants to assure that Members do not have any rights beyond those which the majority is willing to grant.

You don't have to take my word for it. The distinguished majority leader—

whom I affectionately call Smokin' Joe—himself has recognized this. As my colleague, Senator ALEXANDER, from that desk right over there, has previously noted, Senator REID addressed this topic in his book—how appropriate—"The Good Fight," from a boxer and now our majority leader. Senator REID wrote about the battle over the nuclear option in 2005. Things were a little different. This is what he wrote:

Once you opened that Pandora's box, it was just a matter of time before a Senate leader who couldn't get his way on something moved to eliminate the filibuster for regular business as well. And that, simply put, would be the end of the United States Senate.

The end of the United States Senate. The distinguished majority leader said:

It is the genius of the Founders that they conceived the Senate as a solution to the small state/big state problem. And central to that solution was the protection of the rights of the minority. A filibuster is the minority's way of not allowing the majority to shut off debate, and without robust debate, the Senate is crippled.

Senator REID went on to say:

Such a move would transform the body into an institution that looked just like the House of Representatives where everything passes with a simple majority.

Senator REID also wrote:

there will come a time when we will all be gone, and the institutions that we now serve will be run by men and women not yet living, and those institutions will either function well because we've taken care of them, or they will be in disarray and someone else's problem to solve.

Boy, that is pretty heavy stuff; that is meaningful. That is something everybody here should consider.

He described the nuclear option this way at that time:

In a fit of partisan fury—

I am not quite sure we are there yet. I would say it is more of a partisan frustration.

they were trying to blow up the Senate. Senate rules can only be changed by a two-thirds vote of the Senate, or sixty-seven Senators. The Republicans were going to do it illegally with a simple majority, or fifty-one. Vice President Cheney was prepared to overrule the Senate parliamentarian. Future generations be damned.

Do you think the Senator was upset then? He was upset then a heck of a lot more than he was this morning. If only the majority leader would recall his own words.

The Vice President also recognized the damage this would do. This is what Vice President BIDEN said on the floor when he was still a Member of this body. This is important stuff. We all know JOE BIDEN. We are all a friend of JOE BIDEN. He is the Vice President of the United States. When he was a Senator he said something very important:

Put simply, the nuclear option would transform the Senate from the so-called cooling saucer our Founding Fathers talked about to cool the passions of the day to a pure majoritarian body like a Parliament.

Republicans control the Senate, and they have decided they are going to change the

rule. At its core, the filibuster is not about stopping a nominee or a bill, it is about compromise and moderation. That is why the Founders put unlimited debate in. When you have to—and I never conducted a filibuster—but if I did, the purpose would be that you have to deal with me as one Senator. It does not mean I get my way. It means you may have to compromise. You may have to see my side of the argument. That is what it is about, engendering compromise in moderation.

JOE BIDEN went on to say:

If there is one thing I have learned in my years here, once you change the rules and surrender the Senate's institutional power, you never get it back.

Folks, we are about to break the rules to change the rules.

He went on to say:

The nuclear option abandons America's sense of fair play. It is the one thing this country stands for: Not tilting the playing field on the side of those who control and own the field.

Then he said to the Republican side of the aisle, which was then in the majority:

I say to my friends on the Republican side: You may own the field right now, but you won't own it forever. I pray God when the Democrats take back control, we don't make the kind of naked power grab you are doing. But I am afraid you will teach my new colleagues the wrong lessons.

We are only in the Senate as temporary custodians of the Senate. The Senate will go on. Mark my words, history will judge this Republican majority harshly, if it makes this catastrophic move.

I hope the Vice President will listen to his own prayers. We don't need any divine intervention here, but maybe he can share his concerns with the majority leader. It could help us avert a real catastrophe.

The majority leader and the Vice President are not the only people who recognize the damage that would be done by triggering the so-called nuclear option. Our former Parliamentarian, named Bob Dove—a man whose advice I sought when I had the privilege of being the acting Presiding Officer—and Richard Arenberg, a professor and one-time aide to former majority leader George Mitchell, wrote a book on the subject, "Defending the Filibuster."

I know I am quoting a lot, but these are important issues. I hope they stick like a burr under your saddle so they make you stop and think about this. They wrote—

If a 51-vote majority is empowered to rewrite the Senate's rules, the day will come, as it did in the House of Representatives, when a majority will construct rules that give it near absolute control over amendments and debate. And there is no going back from that. No majority in the House of Representatives has or ever will voluntarily relinquish that power in order to give the minority a greater voice in crafting legislation.

Do not be fooled by those who would try to minimize the impact of what the majority is actually contemplating.

The rule changes themselves are less important than the manner in which they will be imposed. Once the major-

ity has decided it can set the rules, there is no limit to what the majority might do in the future. I hope you understand that. There are no constraints. The majority claims these changes are necessary to make the Senate function. If it decides further changes are needed, it will make them. The minority will have no voice, no say, no power, and that has never been the case in the Senate.

Tragically, what the majority contemplates is at once both calamitous and totally unnecessary. The filibuster is a product of our dysfunction, not the source.

I know many Members—and I have harped on this—do not even know what it is like to serve in a functioning Senate. They hardly know what it is like to operate under regular order where bills are referred to committee, amended, brought to the floor, debated, amended, and passed.

This matter should be before the Rules Committee. We should have a complete hearing and then bring it to the floor. We averted this at the first of this year. I know people think the filibuster is to blame for this breakdown, but they are wrong. We don't operate under regular order here because the majority leadership doesn't want to. They have an agenda. I understand that.

They have been trying to operate this place like the House of Representatives for years. They want to control debate and to control the amendments.

I know a little bit about this. When we were talking about the farm bill last year, Senator REID said: We can't do a farm bill in less than 3 weeks. I said: We will do it in 3 days. Senator STABENOW and I worked very hard to get common agreement on the farm bill, but we did it. We needed regular order. We needed to open it up. We needed to give Senators here on our side a chance to at least offer amendments, and we did it. We had 73 amendments. We did it in 2½ days. We had regular order and people said: Gee, is this what the Senate used to be all about? And that was the case. So it can work.

I know there are folks over there who think the filibuster is to blame for this breakdown, but they are wrong. Rather than give up that control, they have decided during the past 4 years—with the exception of a few bills I have just mentioned—I think they want to make it official. I think they would rather blow up the Senate rather than let it work its will.

It will be a tragedy. They think it will save the Senate, but it will destroy it. That threat of destruction may not be obvious to some today, but it is real. If the nuclear option is deployed, one day it will become clear to all. And when that day comes and people wonder: What happened to the Senate? When did it die? We will know the answer. It died the day the nuclear option was triggered. That is what nuclear devices do—they destroy. This is not just

a minor shot across the bow to be used only once. This is a mushroom cloud over the Capitol.

Again, I urge the distinguished majority leader: Don't take your nuclear gun to town.

Madam President, I ask unanimous consent to have the remarks by U.S. Senator Robert C. Byrd at the orientation of new Senators, December 3, 1996, printed in the RECORD.

I also ask unanimous consent that Senator Byrd's final speech before the Rules Committee called "The Filibuster And Its Consequences" be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

REMARKS BY U.S. SENATOR ROBERT C. BYRD  
AT THE ORIENTATION OF NEW SENATORS,  
DECEMBER 3, 1996

Good afternoon and welcome to the United States Senate Chamber. You are presently occupying what I consider to be "hallowed ground." You will shortly join the ranks of a very select group of individuals who have been honored with the title of United States Senator since 1789 when the Senate first convened. The creator willing, you will be here for at least six years. Make no mistake about it, the office of United States Senator is the highest political calling in the land. The Senate can remove from office Presidents, members of the Federal judiciary, and other Federal officials but only the Senate itself can expel a Senator.

Let us listen for a moment to the words of James Madison on the role of the Senate.

"These [reasons for establishing the Senate] were first to protect the people against their rulers; secondly to protect the people against the transient impression into which they themselves might be led. [through their representatives in the lower house] A people deliberating in a temperate moment, and with the experience of other nations before them, on the plan of government most likely to secure their happiness, would first be aware, that those charged with the public happiness, might betray their trust. An obvious precaution against this danger would be to divide the trust between different bodies of men, who might watch and check each other. . . . It would next occur to such a people, that they themselves were liable to temporary errors, through want of information as to their true interest, and that men chosen for a short term, [House members], . . . might err from the same cause. This reflection would naturally suggest that the Government be so constituted, as that one of its branches might have an opportunity of acquiring a competent knowledge of the public interests. Another reflection equally becoming a people on such an occasion, would be that they themselves, as well as a numerous body of Representatives, were liable to err also, from fickleness and passion. A necessary fence against this danger would be to select a portion of enlightened citizens, whose limited number, and firmness might seasonably interpose against impetuous councils. . . ."

Ladies and gentlemen, you are shortly to become part of that all important, "necessary fence," which is the United States Senate. Let me give you the words of Vice President Aaron Burr upon his departure from the Senate in 1805. "This house," said he, "is a sanctuary; a citadel of law, of order, and of liberty; and it is here—it is here, in this exalted refuge; here, if anywhere, will resistance be made to the storms of political phrensy and the silent arts of corruption;

and if the Constitution be destined ever to perish by the sacrilegious hand of the demagogue or the usurper, which God avert, its expiring agonies will be witnessed on this floor." Gladstone referred to the Senate as "that remarkable body—the most remarkable of all the inventions of modern politics."

This is a very large class of new Senators. There are fifteen of you. It has been sixteen years since the Senate welcomed a larger group of new members. Since 1980, the average size class of new members has been approximately ten. Your backgrounds vary. Some of you may have served in the Executive Branch. Some may have been staffers here on the Hill. Some of you have never held federal office before. Over half of you have had some service in the House of Representatives.

Let us clearly understand one thing. The Constitution's Framers never intended for the Senate to function like the House of Representatives. That fact is immediately apparent when one considers the length of a Senate term and the staggered nature of Senate terms. The Senate was intended to be a continuing body. By subjecting only one-third of the Senate's membership to reelection every two years, the Constitution's Framers ensured that two-thirds of the membership would always carry over from one Congress to the next to give the Senate an enduring stability.

The Senate and, therefore, Senators were intended to take the long view and to be able to resist, if need be, the passions of the often intemperate House. Few, if any, upper chambers in the history of the western world have possessed the Senate's absolute right to unlimited debate and to amend or block legislation passed by a lower House.

Looking back over a period of 208 years, it becomes obvious that the Senate was intended to be significantly different from the House in other ways as well. The Constitutional Framers gave the Senate the unique executive powers of providing advice and consent to presidential nominations and to treaties, and the sole power to try and to remove impeached officers of the government. In the case of treaties, the Senate, with its longer terms, and its ability to develop expertise through the device of being a continuing body, has often performed invaluable service.

I have said that as long as the Senate retains the power to amend and the power of unlimited debate, the liberties of the people will remain secure. The Senate was intended to be a forum for open and free debate and for the protection of political minorities. I have led the majority and I have led the minority, and I can tell you that there is nothing that makes one fully appreciate the Senate's special role as the protector of minority interests like being in the minority. Since the Republican Party was created in 1854, the Senate has changed hands 14 times, so each party has had the opportunity to appreciate first-hand the Senate's role as guardian of minority rights. But, almost from its earliest years the Senate has insisted upon its members' right to virtually unlimited debate.

When the Senate reluctantly adopted a cloture rule in 1917, it made the closing of debate very difficult to achieve by requiring a super majority and by permitting extended post-cloture debate. This deference to minority views sharply distinguishes the Senate from the majoritarian House of Representatives. The Framers recognized that a minority can be right and that a majority can be wrong. They recognized that the Senate should be a true deliberative body—a forum in which to slow the passions of the House, hold them up to the light, examine them,

and, thru informed debate, educate the public. The Senate is the proverbial saucer intended to cool the cup of coffee from the House. It is the one place in the whole government where the minority is guaranteed a public airing of its views. Woodrow Wilson observed that the Senate's informing function was as important as its legislating function, and now, with televised Senate debate, its informing function plays an even larger and more critical role in the life of our nation.

Many a mind has been changed by an impassioned plea from the minority side. Important flaws in otherwise good legislation have been detected by discerning minority members engaged in thorough debate, and important compromise which has worked to the great benefit of our nation has been forged by an intransigent member determined to filibuster until his views were accommodated or at least seriously considered.

The Senate is often soundly castigated for its inefficiency, but in fact, it was never intended to be efficient. Its purpose was and is to examine, consider, protect, and to be a totally independent source of wisdom and judgment on the actions of the lower house and on the executive. As such, the Senate is the central pillar of our Constitutional system. I hope that you, as new members will study the Senate in its institutional context because that is the best way to understand your personal role as a United States Senator. Your responsibilities are heavy. Understand them, live up to them, and strive to take the long view as you exercise your duties. This will not always be easy.

The pressures on you will, at times, be enormous. You will have to formulate policies, grapple with issues, serve the constituents in your state, and cope with the media. A Senator's attention today is fractured beyond belief. Committee meetings, breaking news, fundraising, all of these will demand your attention, not to mention personal and family responsibilities. But, somehow, amidst all the noise and confusion, you must find the time to reflect, to study, to read, and, especially, to understand the absolutely critically important institutional role of the Senate.

May I suggest that you start by carefully reading the Constitution and the Federalist papers. In a few weeks, you will stand on the platform behind me and take an oath to support and defend the Constitution of the United States against all enemies, foreign and domestic; to bear true faith and allegiance to the same; and take this obligation freely, without any mental reservation or purpose of evasion; and to well and faithfully discharge the duties of the office on which you are about to enter: So help you God.

Note especially the first 22 words, "I do solemnly swear that I will support and defend the Constitution of the United States against all enemies foreign and domestic . . ." In order to live up to that solemn oath, one must clearly understand the deliberately established inherent tensions between the 3 branches, commonly called the checks and balances, and separation of powers which the Framers so carefully crafted. I carry a copy of the Constitution in my shirt pocket. I have studied it carefully, read and reread its articles, marveled at its genius, its beauty, its symmetry, and its meticulous balance, and learned something new each time that I partook of its timeless wisdom. Nothing will help you to fully grasp the Senate's critical role in the balance of powers like a thorough reading of the Constitution and the Federalist papers.

Now I would like to turn for a moment to the human side of the Senate, the relationship among Senators, and the way that even that faced of service here is, to a degree, governed by the constitution and the Senate's

rules. The requirement for super majority votes in approving treaties, involving cloture, removing impeached federal officers, and overriding vetoes, plus the need for unanimous consent before the Senate can even proceed in many instances, makes bipartisanship and comity necessary if members wish to accomplish much of anything. Realize this. The campaign is over. You are here to be a Senator. Not much happens in this body without cooperation between the two parties.

In this now 208-year-old institution, the positions of majority and minority leaders have existed for less than 80 years. Although the positions have evolved significantly within the past half century, still, the only really substantive prerogative the leaders possess is the right of first recognition before any other member of their respective parties who might wish to speak on the Senate Floor.

Those of you who have served in the House will now have to forget about such things as the Committee of the Whole, closed rules, and germaneness, except when cloture has been invoked, and become well acquainted with the workings of unanimous consent agreements. Those of you who took the trouble to learn Deschler's Procedure will now need to set that aside and turn in earnest to Riddick's Senate Procedure.

Senators can lose the Floor for transgressing the rules. Personal attacks on other members or other blatantly injudicious comments are unacceptable in the Senate. Again to encourage a cooling of passions, and to promote a calm examination of substance, Senators address each other through the Presiding Officer and in the third person. Civility is essential here for pragmatic reasons as well as for public consumption. It is difficult to project the image of a statesman-like, intelligent, public servant, attempting to inform the public and examine issues, if one is behaving and speaking in a manner more appropriate to a pool room brawl than to United States Senate debate. You will also find that overly zealous attacks on other members or on their states are always extremely counterproductive, and that you will usually be repaid in kind.

Let us strive for dignity. When you rise to speak on this Senate Floor, you will be following in the tradition of such men as Calhoun, Clay, and Webster. You will be standing in the place of such Senators as Edmund Ross (KS) and Peter Van Winkle (WEST VIRGINIA), 1868, who voted against their party to save the institution of the presidency during the Andrew Johnson impeachment trial.

Debate on the Senate Floor demands thought, careful preparation and some familiarity with Senate Rules if we are to engage in thoughtful and informed debate. Additionally, informed debate helps the American people have a better understanding of the complicated problems which besiege them in their own lives. Simply put, the Senate cannot inform American citizens without extensive debate on those very issues.

We were not elected to raise money for our own reelections. We were not elected to see how many press releases or TV appearances we could stack up. We were not elected to set up staff empires by serving on every committee in sight. We need to concentrate, focus, debate, inform, and, I hope, engage the public, and thereby forge consensus and direction. Once we engage each other and the public intellectually, the tough choices will be easier.

I thank each of you for your time and attention and I congratulate each of you on your selection to fill a seat in this August body. Service in this body is a supreme honor. It is also a burden and a serious responsibility. Members' lives become open for

inspection and are used as examples for other citizens to emulate. A Senator must really be much more than hardworking, much more than conscientious, much more than dutiful. A Senator must reach for noble qualities—honor, total dedication, self-discipline, extreme selflessness, exemplary patriotism, sober judgment, and intellectual honesty. The Senate is more important than any one or all of us—more important than I am; more important than the majority and minority leaders; more important than all 100 of us; more important than all of the 1,843 men and women who have served in this body since 1789. Each of us has a solemn responsibility to remember that, and to remember it often.

Let me leave you with the words of the last paragraph of Volume II, of *The Senate: 1789–1989*: “Originally consisting of only twenty-two members, the Senate had grown to a membership of ninety-eight by the time I was sworn in as a new senator in January 1959. After two hundred years, it is still the anchor of the Republic, the morning and evening star in the American constitutional constellation. It has had its giants and its little men, its Websters and its Bilbos, its Calhouns and its McCarthys. It has been the stage of high drama, of comedy and of tragedy, and its players have been the great and the near-great, those who think they are great, and those who will never be great. It has weathered the storms of adversity, withstood the barbs of cynics and the attacks of critics, and provided stability and strength to the nation during periods of civil strife and uncertainty, panics and depressions. In war and in peace, it has been the sure refuge and protector of the rights of the states and of a political minority. And, today, the Senate still stands—the great forum of constitutional American liberty!”

MAY 19, 2010—RULES COMMITTEE HEARING, SENATOR BYRD'S OPENING STATEMENT, "THE FILIBUSTER AND ITS CONSEQUENCES"

On September 30, 1788, Pennsylvania became the first state to elect its United States senators, one of whom was William Maclay. In his 1789 journal Senator Maclay wrote, “I gave my opinion in plain language that the confidence of the people was departing from us, owing to our unreasonable delays. The design of the Virginians and of the South Carolina gentlemen was to talk away the time, so that we could not get the bill passed.”

Our Founding Fathers intended the Senate to be a continuing body that allows for open and unlimited debate and the protection of minority rights. Senators have understood this since the Senate first convened. In his notes of the Constitutional Convention on June 26, 1787, James Madison recorded that the ends to be served by the Senate were “first, to protect the people against their rulers, secondly, to protect the people against the transient impressions into which they themselves might be led . . . They themselves, as well as a numerous body of Representatives, were liable to err also, from fickleness and passion. A necessary fence against this danger would be to select a portion of enlightened citizens, whose limited number, and firmness might seasonably interpose against impetuous councils.” That “fence” was the United States Senate. The right to filibuster anchors this necessary fence. But it is not a right intended to be abused.

During this 111th Congress in particular the minority has threatened to filibuster almost every matter proposed for Senate consideration. I find this tactic contrary to each Senator's duty to act in good faith. I share the profound frustration of my constituents

and colleagues as we confront this situation. The challenges before our nation are far too grave, and too numerous, for the Senate to be rendered impotent to address them, and yet be derided for inaction by those causing the delay. There are many suggestions as to what we should do. I know what we must not do. We must never, ever, tear down the only wall—the necessary fence—this nation has against the excesses of the Executive Branch and the resultant haste and tyranny of the majority. The path to solving our problem lies in our thoroughly understanding it. Does the difficulty reside in the construct of our rules or in the ease of circumventing them?

A true filibuster is a fight, not a threat or a bluff. For most of the Senate's history, Senators motivated to extend debate had to hold the floor as long as they were physically able. The Senate was either persuaded by the strength of their arguments or unconvinced by either their commitment or their stamina. True filibusters were therefore less frequent, and more commonly discouraged, due to every Senator's understanding that such undertakings required grueling personal sacrifice, exhausting preparation, and a willingness to be criticized for disrupting the nation's business.

Now, unbelievably, just the whisper of opposition brings the “world's greatest deliberative body” to a grinding halt. Why? Because this once highly respected institution has become overwhelmingly consumed by a fixation with money and media. Gone are the days when Senators Richard Russell and Lyndon Johnson, and Speaker Sam Rayburn gathered routinely for working weekends and couldn't wait to get back to their chambers on Monday morning. Now every Senator spends hours every day, throughout the year and every year, raising funds for reelection and appearing before cameras and microphones. Now the Senate often works three-day weeks, with frequent and extended recess periods, so Senators can rush home to fundraisers scheduled months in advance.

Forceful confrontation to a threat to filibuster is undoubtedly the antidote to the malady. Most recently, Senate Majority Leader Reid announced that the Senate would stay in session around-the-clock and take all procedural steps necessary to bring financial reform legislation before the Senate. As preparations were made and cots rolled out, a deal was struck within hours and the threat of filibuster was withdrawn.

I heartily commend the Majority Leader for this progress, and I strongly caution my colleagues as some propose to alter the rules to severely limit the ability of a minority to conduct a filibuster. I know what it is to be Majority Leader, and wake up on a Wednesday morning in November, and find yourself a Minority Leader.

I also know that current Senate Rules provide the means to break a filibuster. I employed them in 1977 to end the post-cloture filibuster of natural gas deregulation legislation. This was the roughest filibuster I have experienced during my fifty-plus years in the Senate, and it produced the most-bitter feelings. Yet some important new precedents were established in dealing with post-cloture obstruction. In 1987, I successfully used Rules 7 and 8 to make a non-debatable motion to proceed during the morning hour. No leader has attempted this technique since, but this procedure could be and should be used.

Over the years, I have proposed a variety of improvements to Senate Rules to achieve a more sensible balance allowing the majority to function while still protecting minority rights. For example, I have supported eliminating debate on the motion to proceed to a matter (except for changes to Senate rules), or limiting debate to a reasonable

time on such motions, with Senators retaining the right to unlimited debate on the matter once before the Senate. I have authored several other proposals in the past, and I look forward to our committee work ahead as we carefully examine other suggested changes. The Committee must, however, jealously guard against efforts to change or reinterpret the Senate rules by a simple majority, circumventing Rule XXII where a two-thirds majority is required.

As I have said before, the Senate has been the last fortress of minority rights and freedom of speech in this Republic for more than two centuries. I pray that Senators will pause and reflect before ignoring that history and tradition in favor of the political priority of the moment.

I urge all Members of this wonderful body to read what Senator Byrd said and urged and counseled and advised. I know the new Members have not had this experience.

When you first went in, you thought, my gosh, how long is this going to last? The man wrote a book about the Senate. As it turned out, we hung on every word and took his advice, and it is good advice. It is printed in the RECORD. Read it.

The PRESIDING OFFICER. Without objection, the material will be placed in the RECORD.

Mr. ROBERTS. We might have a heck of a test on it next week.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Madam President, I appreciate the comments of the Senator from Kansas. I am sure he will have to take a call from the Vice President to discuss his remarks on the floor. I appreciate the way in which he talked about all that has been said on the floor in the past by the Vice President, and President Obama, who was then a Senator, and the leaders here in the Senate. We have had lots of statements on the floor and commitments made in the past. The majority leader has committed twice on the Senate floor not to use the nuclear option, with the last time being a few months ago. These were not conditional commitments. They were not commitments with caveats. They were not commitments to not violate the rules of the Senate unless it became convenient for political purposes to violate the rules of the Senate.

As recently as January 27, 2011, the majority leader said, and I quote:

I agree that the proper way to change Senate rules is through the procedures established in those rules, and I will oppose any effort in this Congress or the next to change the Senate's rules other than through the regular order process.

Earlier this year, on January 24, 2013, there was a discussion between the minority leader Senator MCCONNELL and the majority leader Senator REID. Senator MCCONNELL said:

I will confirm to the majority leader that the Senate would not consider other resolutions relating to any standing order or rules of this Congress unless they went through the regular order process?

He was posing a question to the majority leader.

Majority Leader REID said:

That is correct. Any other resolutions related to Senate procedure would be subject to a regular order process, including consideration by the Rules Committee.

That was January 24, 2013.

What has happened since that point that would change the way the majority leader views this issue? Well, let's see. We confirmed the Secretary of Energy by a vote of 97-0. We confirmed the Secretary of Interior with a vote of 87-11. We confirmed the Secretary of the Treasury with a vote of 71-26. We confirmed the Secretary of State 94-3. I might add in that case, that vote happened just 7 days after the Senate got his nomination. We confirmed the Secretary of Commerce 97-1. We confirmed the Secretary of Transportation 100-0. We confirmed the Director of the Office of Management and Budget 96-0. We confirmed the Administrator of the Center for Medicare and Medicaid Services 91-7. We confirmed the Chair of the Security and Exchange Commission by voice vote. In other words, he was confirmed unanimously. Not to mention the fact we have passed major legislation out of the Senate. We just completed a 3-week debate on a major immigration overhaul, and it passed with a bipartisan vote. We had a major debate on a farm bill, which passed with a bipartisan vote. Other legislation has moved through the Senate in the last few months.

So it begs the question: Why are we now having this discussion? The majority leader said back in January he wasn't going to change the rules, and to change the rules, you have to break the rules. Let's make that very clear. It takes 67 votes to change the rules of the Senate. What is being talked about here is basically using a procedural device—a gimmick, if you will—to be able to change the rules to 51 votes. In other words, breaking the rules to change the rules.

There is absolutely no basis and no foundation based on the numbers and the facts I just quoted for the majority to be making the argument that they are here today.

If you go back and look at the statements that have been made by others in the past—and I remember coming here in 2005 as a new Member of the Senate from the House of Representatives. At that point we were debating judicial nominations. The Democrats were holding up several of President Bush's judicial nominations. There was a big debate about whether to exercise the nuclear option; in other words, to confirm some of those with 51 votes.

I remember at the time being sympathetic to that. I came from the House of Representatives. In the House of Representatives we moved things in an orderly fashion. The Rules Committee decided what legislation came to the floor, what amendments were made in order, and how much time was allowed for debate on each amendment. It was a very structured and orderly process. Those of us who got here to the Senate

were frustrated at times with the slow pace in the Senate. On some levels it made sense to think: Gee, wouldn't it be great if we could make the Senate function more like the House.

Fortunately, cooler heads prevailed because the Senate is not designed to function like the House. It was created for a very different purpose and a very different design. What we are talking about here would completely undermine that purpose and that design for this institution. We have observed traditions, rules, in the Senate for decades. What we are talking about, if the majority has its way, is doing something that would break the rules to change the rules and forever change the Senate in a way the majority leader Senator REID mentioned back in 2009; that doing that would "ruin" the country and the Senate would be "destroyed" if we went about a rules change along the lines of what is being talked about today. So I hope cooler heads will prevail again. I certainly understand now, as I look back on what happened in 2005, the wisdom of those who had been here a little bit longer and understood a little bit more about the way this institution operates: the importance of having a Senate where you have open debate, where you have the opportunity for amendments—something that in the House oftentimes you do not have the opportunity to do.

It is important, in my view, that Republicans and Democrats come together and recognize if we go back on the traditions, the rules, the precedents in the Senate, we will be forever changing not just the rules, but we will be changing the Senate, and that is certainly not what our Founders had in mind, nor do I think that is what our colleagues on the other side have in mind. They may be well-intentioned, but what they are talking about doing is going to change forever the Senate in a way that would be very perilous to this institution and, more importantly, jeopardize the rights of the American people to have their voice heard in the Senate.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, I have the greatest respect for my friend from South Dakota. But, obviously, he missed the speeches this morning. We went through all this. I am not going to repeat what has gone on since the broken promise earlier this year.

#### EXECUTIVE SESSION

NOMINATION OF RICHARD CORDRAY TO BE DIRECTOR, BUREAU OF CONSUMER FINANCIAL PROTECTION

Mr. REID. Madam president, I move to proceed to executive session to consider Calendar No. 51.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The bill clerk read the nomination of Richard Cordray, of Ohio, to be Director, Bureau of Consumer Financial Protection.

#### CLOTURE MOTION

Mr. REID. Madam President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The bill clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Richard Cordray, of Ohio, to be Director, Bureau of Consumer Financial Protection.

Harry Reid, Tim Johnson, Barbara Boxer, Elizabeth Warren, Debbie Stabenow, Jon Tester, Al Franken, Jack Reed, Tom Harkin, Ron Wyden, Patrick J. Leahy, Amy Klobuchar, Robert P. Casey Jr., Jeff Merkley, John D. Rockefeller IV, Max Baucus, Richard Blumenthal, Carl Levin.

#### LEGISLATIVE SESSION

Mr. REID. Madam President, I now move to proceed to legislative session. The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The motion was agreed to.

#### EXECUTIVE SESSION

#### NOMINATION OF RICHARD F. GRIFFIN, JR., TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD

Mr. REID. Madam President, I move to proceed to executive session to consider Calendar No. 100.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The bill clerk read the nomination of Richard F. Griffin, Jr., of the District of Columbia, to be a Member of the National Labor Relations Board.

#### CLOTURE MOTION

Mr. REID. Madam President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The bill clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Richard F. Griffin, Jr., of the District of Columbia, to be a Member of the National Labor Relations Board.

Harry Reid, Tom Harkin, Jeff Merkley, Benjamin L. Cardin, Richard Blumenthal, Martin Heinrich, Sheldon Whitehouse, Al Franken, Kirsten E. Gillibrand, Brian Schatz, Christopher Murphy, Richard J. Durbin, Maria Cantwell, Bill Nelson, Carl Levin, Dianne Feinstein, Patty Murray.

#### LEGISLATIVE SESSION

Mr. REID. Madam President, I move to proceed to legislative session.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The motion was agreed to.

#### EXECUTIVE SESSION

#### NOMINATION OF SHARON BLOCK TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD

Mr. REID. Madam President, I move to proceed to executive session to consider Calendar No. 101.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The bill clerk read the nomination of Sharon Block, of the District of Columbia, to be a Member of the National Labor Relations Board.

#### CLOTURE MOTION

Mr. REID. Madam President, I have a cloture motion at the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The bill clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Sharon Block, of the District of Columbia, to be a Member of the National Labor Relations Board.

Harry Reid, Tom Harkin, Jeff Merkley, Benjamin L. Cardin, Richard Blumenthal, Martin Heinrich, Sheldon Whitehouse, Al Franken, Kirsten E. Gillibrand, Brian Schatz, Christopher Murphy, Richard J. Durbin, Maria Cantwell, Bill Nelson, Carl Levin, Dianne Feinstein, Patty Murray.

#### LEGISLATIVE SESSION

Mr. REID. Madam President, I now move to proceed to legislative session.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.

#### EXECUTIVE SESSION

#### NOMINATION OF MARK GASTON PEARCE TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD

Mr. REID. Madam President, I now move to proceed to executive session to consider Calendar No. 104.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The bill clerk read the nomination of Mark Gaston Pearce, of New York, to be a Member of the National Labor Relations Board.

#### CLOTURE MOTION

Mr. REID. Madam President, I have a cloture motion I would ask the clerk to report if the Chair agrees.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The bill clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Mark Gaston Pearce, of New York, to be a Member of the National Labor Relations Board.

Harry Reid, Tom Harkin, Jeff Merkley, Benjamin L. Cardin, Richard Blumenthal, Martin Heinrich, Sheldon Whitehouse, Al Franken, Kirsten E. Gillibrand, Brian Schatz, Christopher Murphy, Richard J. Durbin, Maria Cantwell, Bill Nelson, Carl Levin, Dianne Feinstein, Patty Murray.

Mr. REID. Madam President, I ask unanimous consent that the mandatory quorum under rule XXII of the Senate be waived.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

#### LEGISLATIVE SESSION

Mr. REID. Madam President, I now move to proceed to legislative session.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The motion was agreed to.

#### EXECUTIVE SESSION

#### NOMINATION OF FRED P. HOCHBERG TO BE PRESIDENT OF THE EXPORT-IMPORT BANK OF THE UNITED STATES

Mr. REID. Madam President, I move to proceed to executive session to consider Calendar No. 178.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The bill clerk read the nomination of Fred P. Hochberg, of New York, to be President of the Export-Import Bank of the United States.

#### CLOTURE MOTION

Mr. REID. Madam President, there is a cloture motion at the desk.

The PRESIDING OFFICER. The cloture motion having been presented



under rule XXII, the Chair directs the clerk to read the motion.

The bill clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Fred P. Hochberg, of New York, to be President of the Export-Import Bank of the United States.

Harry Reid, Tim Johnson of South Dakota, Benjamin L. Cardin, Christopher A. Coons, Patrick J. Leahy, Charles E. Schumer, Ron Wyden, Patty Murray, Heidi Heitkamp, Tom Udall of New Mexico, Martin Heinrich, Jack Reed, Sheldon Whitehouse, Elizabeth Warren, Richard J. Durbin, Kirsten E. Gillibrand, Robert Menendez.

Mr. REID. Madam President, I ask unanimous consent that the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

#### LEGISLATIVE SESSION

Mr. REID. Madam President, I now move to proceed to legislative session.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The motion was agreed to.

#### EXECUTIVE SESSION

#### NOMINATION OF THOMAS EDWARD PEREZ TO BE SECRETARY OF LABOR

Mr. REID. Madam President, I move to proceed to executive session to consider Calendar No. 99.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The bill clerk read the nomination of Thomas Edward Perez, of Maryland, to be Secretary of Labor.

#### CLOTURE MOTION

Mr. REID. Madam President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The bill clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Thomas Edward Perez, of Maryland, to be Secretary of Labor.

Harry Reid, Tom Harkin, Patrick J. Leahy, Bill Nelson, Christopher A. Coons, Amy Klobuchar, Tim Kaine, Jack Reed, Barbara A. Mikulski, Sheldon Whitehouse, Sherrod Brown, Benjamin L. Cardin, Robert P. Casey Jr., Bernard Sanders, Al Franken, Robert Menendez, Barbara Boxer.

Mr. REID. Madam President, I ask unanimous consent that the manda-

tory quorum under rule XXII be waived.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

#### LEGISLATIVE SESSION

Mr. REID. Madam President, I move to proceed to legislative session.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The motion was agreed to.

#### EXECUTIVE SESSION

#### NOMINATION OF REGINA MCCARTHY TO BE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

Mr. REID. Madam President, I move to proceed to executive session to consider Calendar No. 98.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The bill clerk read the nomination of Regina McCarthy, of Massachusetts, to be Administrator of the Environmental Protection Agency.

#### CLOTURE MOTION

Mr. REID. Madam President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The bill clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Regina McCarthy, of Massachusetts, to be Administrator of the Environmental Protection Agency.

Harry Reid, Barbara Boxer, Benjamin L. Cardin, Christopher A. Coons, Patrick J. Leahy, Tom Carper, Ron Wyden, Patty Murray, Tom Udall, Martin Heinrich, Bernard Sanders, Sheldon Whitehouse, Max Baucus, Richard J. Durbin, Kirsten E. Gillibrand, Jeff Merkley, Brian Schatz.

Mr. REID. Madam President, I ask unanimous consent that the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

#### LEGISLATIVE SESSION

Mr. REID. Madam President, I move to proceed to legislative session.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The motion was agreed to.

The PRESIDING OFFICER. The Republican leader.

#### UNANIMOUS CONSENT REQUEST—EXECUTIVE CALENDAR

Mr. McCONNELL. Madam President, I have a consent that I think would set up these votes in a much more expeditious way than the way the majority leader is proceeding. But first let me just say, these are dark days in the history of the Senate. I hate that we have come to this point. We have witnessed the majority leader break his word to the Senate.

Now our request for a joint meeting of all the Senators has been set for Monday night—a time when attendance around here is frequently quite spotty—in an obvious effort to keep as many of his Members from hearing the concerns and arguments of the other side as possible. It remains our view that for this to be the kind of joint session of the Senate that it ought to be, given the tendency of the Senate to have sparse attendance on a Monday night, to have this meeting on Tuesday before it is too late.

Having said that, a more expeditious way to accomplish most of what the majority leader is trying to accomplish would be achieved by the following consent: I ask unanimous consent that on Tuesday at 2:15, the Senate proceed to consecutive votes on the confirmation of the following nominations: No. 104, that is Pearce to be a member of the NLRB; No. 102, Johnson, to be a member of the NLRB, and No. 103, Miscimarra, to be a member of the NLRB.

I might just say, parenthetically, if those nominees were confirmed, coupled with the two nominees illegally appointed, whose illegal appointments' term continue until the end of the year, the NLRB would have a full complement of five members and able to conduct its business.

I further ask consent that following those votes, the Senate proceed to the cloture motion filed on Calendar No. 99; that is, Perez, to be Secretary of Labor; and, further, if cloture is invoked, the Senate immediately proceed to a vote on the confirmation of the nomination—I would add, parenthetically, that would eliminate the post 30 hours, assuming cloture were invoked on the very controversial nominee, Perez, to be Secretary of Labor—further, the Senate then vote on the cloture motion filed on Calendar No. 98, McCarthy, to be EPA Director; and if cloture is invoked, the Senate proceed to a vote on the confirmation of the nomination—also eliminating the 30 hours postcloture if cloture is invoked on McCarthy; and I might add that the ranking member of the environment committee supports cloture on the McCarthy nomination. Thereby, it is reasonable to assume that cloture would be invoked on what is for a lot of our Members, including myself, a very controversial nomination. I further ask consent that the Senate then vote on the cloture motion that was filed on Calendar No. 178—this is someone named Hochberg, to be president of the



Export-Import Bank—again, if cloture is invoked, the Senate proceed to an immediate vote on the confirmation of that nomination—again, eliminating the 30 hours postcloture, assuming cloture is invoked; and I assume that it will be—finally, I ask consent that following the votes listed above the Senate proceed to the cloture votes on the remaining three filed cloture motions.

Now, before the Chair rules, what this allows, as I indicated, is for the Senate to work efficiently through a series of nominations in a quicker fashion than the majority leader has proposed.

They would get their votes and there would not be a delay. This would only leave discussion and votes on the three remaining illegally—according to the Federal court—the three remaining illegally appointed nominations. That is my unanimous consent.

The PRESIDING OFFICER (Mr. COONS). Is there objection?

Mr. REID. Mr. President, reserving the right to object, no matter how often my friend rudely talks about me not breaking my word, I am not going to respond talking about how many times he has broken his word. That does not add anything to this debate we are having. So he can keep saying that as much as he wants. All we have to do is look back at the record today.

As to the caucus Monday night, my Members will be here. I do not understand—unless this is part of the overall pattern we have come to expect around here, to not do anything today you can do tomorrow. We are going to have a vote at 5:30. Members are usually pretty good at getting here for votes at 5:30.

I also am stunned by boasting about the ranking member on the EPW Committee suddenly seeing the light and he is going to allow Gina McCarthy to get a vote. Now, is that not wonderful? Is that not something to cheer about? He has held up this woman. He is the one who is responsible for 1,100 questions to her. That is what is wrong here. This is so transparent what my friend has asked. He has said he wants to approve two Republican members to the NLRB. Let's have those votes first—only one Democratic nominee. What does this mean? It means within a couple of months Republicans have a majority of the NLRB. I do not blame him for wanting that.

They do not like the organization anyway, just like they do not like Cordray's organization. So I can understand that the Republican leader would like to get consent to create a Republican majority on the NLRB. But it is so obvious. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. We are going to have a caucus Monday at 6 o'clock in the Old Senate Chamber. We are going to vote at 5:30. I would hope with something this important we will have attendance. I know my caucus will be there. If nothing is resolved there, which is

the way things have been going today, likely it will not be, so we will have a vote sometime early Tuesday morning on these nominations.

Mr. MCCONNELL. Mr. President, the majority leader always reminds me he can have the last word. I am sure he can have the last word again. Speaking for Senator VITTER, he did ask for a lot of information from the new prospective Administrator of the EPA—so did Senator BOXER. She asked for 70,000 pages herself. But he was satisfied with the responses he got. This is how the process ought to work. This is how it has worked for decades. You are trying to get answer to questions. You are trying to engage in some kind of prediction as to how somebody might operate in the future.

What the majority leader has been saying all along is he wants the confirmation process to be speedy and for the minority to sit down and shut up. He believes that advise and consent means sit down and shut up; confirm these nominees when I tell you to.

The reason he is having to take a lot of heat over this is because he has broken his word to the Senate, given last January, that we had resolved the rules issue for this Congress. I know for a fact, even though he may get his 51 votes, there are a lot of Democrats who are not happy with where the leader is.

When they tell me that—the Republican I expect they would be least likely to want to tell that to—I know what is going on here. They have been hammered into line. This has been personalized by the majority leader: You have to do this for me. What is astonishing is he is saying, you have to do this for me because you have to help me break my word and go back on everything I said in my own biography just a few years ago. You have to help me look bad. You have to help me break my word, violate what I said in my own biography, create unnecessary controversy in the Senate, which has done major bills on a bipartisan basis all year long and had begun to get back to normal.

This is very hard to understand. This is why my Members are astonished at where we are. They are scratching their heads, saying: Who manufactured this crisis? We know who manufactured it, the guy right over here to my left. So this is a very sad day for the Senate. If we do not pull back from the brink, my friend the majority leader is going to be remembered as the worst leader of the Senate ever, the leader of the Senate who fundamentally changed the body.

It makes me sad. Some of my Members are more angry. I am more sad about it. But it is a shame we have come to this. I sure hope all the Democratic Senators are there Monday night. I am certainly going to encourage my Members to be there. It is high time we sat down and tried to understand each other, because many Members on the other side are hearing a different version of the facts that are largely unrelated to reality.

I know my friend the majority leader will have the last word. He reminds me of that frequently, on a daily basis, that the difference between being the majority leader and the minority leader is he gets the last word. So I will yield the floor and listen to the last word.

Mr. REID. Mr. President, no matter how many times he says it, he tends to not focus on what he has done to the Senate. As I indicated earlier, there is lots of time for name-calling. But we know it is replete in the RECORD, as delivered this morning, how he said there would be no filibusters, we would follow the norms of the Senate, only extraordinary circumstances.

The extraordinary circumstances have come because we are in session, I guess. The only person I know who thinks things are going just fine is my friend. The American people know this institution is being hammered hard. He does not have to worry about me for the heat I have taken. I have not taken any heat. I had a very nice caucus today. My caucus was thoughtful. We heard from—out of my 54 Senators, we probably heard from 25 or 26 of them. Attendance was nearly perfect. So I do not want him to feel sorry for the Senate, certainly not for me.

I am going to continue to try to speak in a tone that is appropriate. His name-calling—I guess he follows, and I hope not, the demagogic theory that the more you say something, even if it is false, people start believing it.

It is quite interesting that Richard Cordray, who no one—no one—says there is a thing wrong with this man, former attorney general of the heavily populated State of Ohio—Democrats and Republicans have said he is a good guy—this man has been waiting 724 days; Assistant Secretary for Defense, 292 days; Monetary Fund Governor, 169 days; EPA, 128 days; NLRB, two of them, 573 days. We have 15 of them. Average time waiting is 9 months.

Reshuffling the votes as he wants them, that is a laugh. He wants to have a majority of the NLRB be Republicans. I do not think that is a good idea. We are going to have our caucus Monday. I think it was a good idea. I have tried to have them before. My friend has objected to them. That is replete in the press. But we are going to have this one. I am happy to do that.

My friend said the process works. The process works? The status quo is good. I do not think so.

Mr. MCCONNELL. Of course, the majority of the NLRB would not be Republicans. I have mentioned to the administration on several occasions: Send us up two nominees who are not illegally appointed. But we cannot seem to get that done. I mean, the taint attached to the two NLRB nominees and to Mr. Cordray, who I agree is a good man and many of my Members support, is that they were illegally appointed.

But, of course, the agencies have not been at a disadvantage. They are there

waiting. He may have been waiting to be confirmed, but he is not waiting to do the job. He is in office. The two NLRB members are in office. The question is, do we respect the law? A Federal court has said the two NLRB members were illegally appointed.

Mr. CORDRAY, unfortunately, was appointed on exactly the same day in exactly the same way. Is the Senate completely lawless? Do we not care what the Federal courts say? I am stunned at where we are. It is pretty clear to me that all the other nominees are highly likely to be confirmed.

What it comes down to is that the majority leader is going to break the rules of the Senate to change the rules of the Senate in order to confirm, with 51 votes, three illegally appointed positions that the Federal courts have told us are unconstitutionally appointed. That is the rationale for the nuclear option?

That is why I say it is a sad day for the Senate, a sad day for America.

Mr. REID. Mr. President, illegally appointed? Why did President Obama recess appoint Cordray and the two NLRB members? Because the Republicans had blocked them, blocked them, blocked them, blocked them. We count Cordray as only 571 days. That went on long before he got there. ELIZABETH WARREN is the one who set up this program. They said: No chance. Do not even think of bringing her here. That is when he came with Cordray. ELIZABETH WARREN found him as attorney general of Ohio. So these big crocodile tears—you have recess appointments because the President had no choice if he wanted his team to work.

He said: Oh, we would be happy to process them quickly, just like Richard Perez has been processed quickly? Just like all of these people have been processed quickly? Sorry. So there is not a chance that we are going to let the NLRB be dominated by Republicans. That one organization, above all, looks out for working men and women in this country, should not be dominated by Republicans. It is not going to be.

So I repeat, this issue can be resolved very quickly. I had somebody out here at my stakeout say: What happens if you get cloture on everybody?

I said: There is no problem. They can all vote against these people. They can vote against them, every one of them. But they, on a procedural basis, they are holding up votes on people who are well qualified and would be approved by the Senate if they got a vote. So this is a little strange deal. Talk about marshaling your troops to do something that is absolutely wrong. It is that. If they are so worried about the rules changes around here, it would seem to me they should approve three qualified people whom no one—no one—suggests there is anything wrong with any of them.

Why were they recess appointed? Because the Republicans forced President Obama to do that. There will be no further votes this week. The next vote will be Monday at 5:30.

The PRESIDING OFFICER (Mr. MERKLEY). The Republican leader.

Mr. MCCONNELL. Mr. President, on the issue of delay, I am trying to avoid bursting out in laughter. The two NLRB nominees were sent up to the Senate December 15, 2011—December 15, 2011. Before their paperwork got here, 2 weeks later the President recess appointed them. Delay? Their paperwork had not even arrived. The committee could not do anything with them. A couple of weeks later they were recess appointed.

That is not my definition of a delay, by any objective standard.

The core issue here, no matter how much the majority leader tries to obfuscate and discuss other matters, is that he is prepared to break the rules of the Senate to change the rules of the Senate for three nominees who were unconstitutionally appointed, according to the Federal Circuit Court in Washington, DC. For that, the majority leader proposes to use the nuclear option? It is a sad, sad commentary on today's Senate.

The PRESIDING OFFICER. The majority leader.

Mr. REID. A sad day in the Senate created by the Republicans. This rules change—he keeps talking about the rules change. The Presiding Officer knows the Constitution is very clear. It is clear that there is one paragraph that says treaties take a two-thirds vote. In that same paragraph, how many votes does it take to confirm a nomination? A simple majority. That is in our Constitution. Since 1977 rules have been changed in this body 17 times—not by fancy things done by the Rules Committee but right here in the Senate.

We have three people who are qualified, and if Republicans want to avoid a problem—obviously they don't. What they want to do is continue.

Can you imagine—the American people are looking at this and saying: The Republican leader thinks the Senate is going just fine, the status quo is good? Look at any poll. The Gallup Poll did one. Eighty-six percent of the American people—why do they think things are bad? Because of gridlock, not doing important things. Sure we were able to get a few things done, but I have been here a while, and we have done some good things this year, but we should be doing lots of good things, not focused on immigration and a farm bill that has been passed twice, on a postal bill that we passed once and we haven't passed again. We talk a lot about WRDA. I am glad we got that done, WRDA, and I am not going to denigrate my friend, the chairman of that committee, but that bill is a mere shadow of its former self because of what the Republicans have done to make a mockery of what goes on here.

All we want is for the President of the United States, whoever that might be, Democrat or Republican, to be able to have the team he wants as contemplated in that document called the

Constitution of the United States. That is not asking too much.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MERKLEY. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KING). Without objection, it is so ordered.

Mr. MERKLEY. Are there any rules currently on how long one may speak?

The PRESIDING OFFICER. Senators may speak for up to 10 minutes each.

Mr. MERKLEY. I have been listening carefully to the debate that has been taking place here on the floor, and the esteemed minority leader had a couple of phrases that he used any number of times.

One of those was that this debate is about whether to break the rules in order to change the rules, and the second phrase, also involving the word "break," was to repeatedly say to the majority leader: You have broken your word. Those are very powerful words. My mother always told me that when people start saying things like that, it is because they are at a loss for a real argument, but I found them disturbing. I found both of those phrases disturbing. I found them disturbing because they are so at odds with what this conversation is really about.

We are here in the midst of a constitutional crisis. Our Constitution was set up with a balance of powers between three coequal branches, with checks and balances. Never in their wildest dreams did the crafters of our Constitution envision that a minority of the Senate, a minority of one Chamber, would undermine the functioning of the other two branches. In fact, they were very deliberate—very, very deliberate—in their determination that there not be such a possibility. They laid out with clarity that advise and consent on treaties took a supermajority, but when it came to the other branches, the judicial branch and executive branch have a de facto simple majority standard in the Constitution. They are in exactly the same paragraph, so you can compare them, one to the other.

Our Founders talked about this, and they talked about it because they had the experience with the Continental Congress in which a supermajority had caused all sorts of difficulties. So I thought I would remind us a little bit about the framework they laid out in the Constitution.

Alexander Hamilton said on a supermajority it would lead to "tedious delays; continual negotiation and intrigue; contemptible compromises of the public good." Alexander Hamilton felt so strongly that there should be a simple majority standard. He wasn't alone. We have Madison, who wrote that "the fundamental principle of free government would be reversed" if a

supermajority was the functioning principle.

So we have this system of coequal branches with simple majority votes on nominations as a check against extraordinarily ill-advised nominations by the executive branch. Indeed, that has been the tradition throughout our Nation's history—simple majority votes on a timely basis on nominations, interspersed by very, very occasional blockades put up by exercising the will to filibuster but very rare use of that until the last few years. Indeed, it was just a few years ago that our Republican colleagues were in charge, and they were upset by a small number of filibusters by the Democrats on judicial nominees, and they came to this floor and they said that is not acceptable. They reminded us of this constitutional history, of this constitutional framework, and they asked for a deal. The deal they asked for was they wouldn't change the rules if Democrats wouldn't filibuster the nominations, and that deal was struck.

But now the tide has turned. The parties are reversed, and suddenly that deal is not holding because we see filibuster after filibuster after filibuster obstructing the ability of the executive branch—with a President reelected by the citizens of the United States—and with vacancies in the judicial branch, with judicial emergencies from hither to yon, with the largest number of judicial vacancies and the largest number of executive branch appointments piled up. Yet my colleagues on the other side are saying: The Senate is functioning just fine. Only about 8 percent of the American people think the Senate is functioning fine, and those 8 percent one would have to recognize are just not paying attention.

This is not the Senate I knew as a young man, coming here as an intern and sitting up in the staff gallery for Senator Hatfield. I would come down to the floor to brief him on the amendments and the debate before each vote. At that time, we had simple up-or-down votes on nominations, with rare exception. Even if we turn the clock back to the time of Lyndon B. Johnson, in the 6 years when Lyndon B. Johnson was majority leader in this Chamber, only once in his 6 years did he need to file a motion in order to close debate, and that wasn't just on executive nominations but a combination of executive nominations, judicial nominations and legislation—just once in 6 years.

Senator REID, in his first 6 years as majority leader, had to file 391 motions. This cloture process is designed to take a long period of time, often up to 1 week, because it was envisioned it would be used rarely.

So here we are with the minority in the Senate doing deep damage to the executive branch, deep damage to the judiciary by the abuse of the filibuster, creating an imbalance or creating unequal branches of government that is completely out of sync with the con-

stitutional vision. Are we, as Members of this body—having taken a pledge to uphold the Constitution and having that responsibility—going to allow this deep abuse of the constitutional vision of equal branches? I don't think anyone who takes their pledge seriously can come to this floor and argue that a small group of the Senate should be able to do deep damage to the other branches.

The Republican leader said the strategy is to break the rules in order to change the rules. I thought I would just remind him that—and I believe he came here in 1985—since the time he first arrived, there have been many times the Senate changed the precedent on the application of rules. Using a simple majority, the Senate changed the application of a rule. It was done once in December 1985, once in September of 1986, then twice in 1987, once in 1995, twice in 1996, once in 1999, and once in the year 2000 and in the year 2011. That is 10 times during the time the Republican leader has been a Member of this Senate.

The minority leader described this as a nuclear option. So using his reasoning, there have been 10 nuclear option bombs exploded in this Chamber during the time he has served here. Yet I didn't hear that mentioned in the presentation he put forward. It might interest the Republican leader to recall that of these instances, where under the standard of a simple majority the application of a rule was changed during the time he has served here, that seven of those times were under Republican leadership. It has occurred three times under Democratic leadership. So seven times under Republican leadership the type of action we are discussing—of reorienting the application of a rule in order to make the Senate work better—and three times under Democratic leadership. All of these instances occurred during the time he has served in this Chamber.

So to come to the floor and talk about breaking the rules in order to change the rules, the Republican leader would have to go back and talk about those 10 times and explain how 7 of them happened under Republican leadership, but somehow that doesn't qualify as being the same standard. I think it is important to get away from the overinflation of the rhetoric that has been put forward.

The second piece that bothered me in this debate was saying the majority leader broke his word. I think everyone who is party to a deal understands there are two parties to a deal and those two parties need to uphold their half. So I would remind folks about what the Republican leader's half of that deal was. I put on this chart, "The January Pledge." This is the pledge made by the Republican leader on the floor of this Chamber. He said: "Senate Republicans will continue to work with the majority to process nominations, consistent with the norms and traditions of the Senate."

What are those norms and traditions? Those norms and traditions are that nominations are able to be voted on in a modest period of time with up-or-down votes. If we should have any doubt about what the minority leader meant about norms and traditions, we can go to the Republican policy document from 2005. Here we have the last major debate over the abuse of the filibuster—Democrats in the minority, Republicans in the majority—and this is what the Republican policy argument said:

This breakdown in Senate norms is profound. There is now a risk that the Senate is creating a new 60-vote confirmation standard. The Constitution plainly requires no more than a majority vote to confirm any executive nomination, but some Senators have shown that they are determined to override this constitutional standard.

I will stop quoting there for a minute and just note this was a very clear delineation of the constitutional standard during the time the Republican leader was in this Chamber, in 2005—not so many years ago. The document goes on to say:

Thus, if the Senate does not act . . . to restore the Constitution's simple majority standard, it could be plausibly argued that a precedent has been set by the Senate's acquiescence in a 60-vote threshold for nominations.

The document goes on to talk about the role of the Constitution in advise and consent:

One way that Senators can restore the Senate's traditional understanding of its advice and consent responsibility is to employ the "constitutional option"—an exercise of a Senate majority's power under the Constitution to define Senate practices and procedures. . . . Exercising the constitutional option in response to judicial nomination filibusters would restore the Senate to its longstanding norms and practices.

So if we want to know what norms and traditions meant in this pledge made in January, it is all laid out in extensive detail in the Republican policy document, and it is laid out in the history of the United States. It means a modest amount of time to have a vote after a nomination comes out of committee, with a simple up-or-down vote, with rare exception.

But that is not what we have had. So I would ask the Republican leader to engage in a discussion about our constitutional role, much like the debate the Republicans led in 2005. Because otherwise we are just casting aspersions, and the citizens looking in wonder at what happened to that great deliberative institution—the Senate.

This standard of processing nominations according to the norms and traditions of the Senate did not materialize after January. Within days, there was the first ever—first ever in U.S. history—filibuster of a nominee for Defense Secretary. Ironically, that nominee was former Republican Senator Chuck Hagel.

Within a short period of time after that, we had a letter from 44 Senators saying they would not allow a vote on

any nominee for the Consumer Financial Protection Bureau. Any nominee? That is the advice and consent role embodied in the Constitution that calls for a simple up-or-down vote? They are going to use the filibuster to oppose any nominee, regardless of the person's qualifications?

That is actually using the filibuster in a whole new way to basically say we don't have the votes to undo the Consumer Financial Protection Bureau—which, by the way, is charged with stopping predatory practices that undermine the success of families—so instead of trying to get rid of this institution that protects families—and I am not sure where family values fits in there—we are, instead, going to prevent anyone from exercising leadership authority and sitting in the Director's chair at the CFPB.

I see my colleague is here and waiting to speak, so I will conclude with this. Let's recognize that the deal laid out in January just didn't work. It didn't work. It doesn't make sense to keep saying who didn't make it work. Certainly, from my perspective on this side of the aisle, this issue of continuing to work to process nominations consistent with norms and traditions didn't work. My colleagues across the aisle have a different concept of why it didn't work. But at the heart of it, as they argued in 2005, there is a constitutional vision for the use of advice and consent, and that constitutional vision is in deep trouble. It is not permission for one coequal branch to undermine the other two branches.

That is why the Members of this body need to have this debate. It is why I am on the floor now, and it is why we need to wrestle with restoring the role of this Senate, the proper role in the nomination process.

I yield the floor.

The PRESIDING OFFICER (Mr. COONS). The Senator from Alabama.

Mr. SESSIONS. Mr. President, we are in an unpleasant time, indeed, in the Senate. I hate to see it happen. This is a robust body. We are at each other. We defend the interests of our constituents and try to advocate for the values we share, and it is a contentious place at times, but we usually work our way through that. I would just say there is no reason we should be at this point today.

I do believe the majority leader has been abusing the powers of his office. I remain dreadfully concerned and firmly believe this consistent practice of using the tactics of refusing to consider certain bills and filling the tree to keep Members of the Senate from having a vote is an abuse maybe even larger than the issue we are dealing with today. In fact, it is larger.

For example, we have been debating the question of interest rates going up on student loans and how to fix that. There are two different bills, two different ideas. One of those bills the majority leader supports. He has brought it up and he wants to vote on it, but he

doesn't want to vote on anything else. But there are a number of Senators on this side, along with Democratic Senators who agree with them in a bipartisan way, who have come up with a better bill—I think it is better—and we want to vote on it. But, the majority leader refused to allow us to vote on that alternative. Time and time again, he prevents us from voting on legislation and from engaging in a full and open amendment process.

So in the Senate, on an important issue, on an extremely well-thought-out alternative plan that would fix the student loan interest rate issue, the majority leader basically says: No, you don't get a vote.

This is a change in the history of the Senate, and it goes on every day. Senators have to plead with the majority leader to get a vote on an amendment. This is not the way the Senate should be. It is a very big deal, it goes on every day, and it is time to stop it.

So now we have this idea that nominations have to be moved through at the pace the majority leader would like them to be. Many of these are, frankly, very controversial for very significant reasons. In my opinion, the President's nominations in his second term have been less capable than those from his first. Many of them have serious weaknesses that need to be examined, and many of them should never be approved. Let me talk about one now that is about to come to the floor. We ought to debate that one. The Constitution provides the Senate should advise and consent on nominations.

We have to consent to a nomination. That is the question we are dealing with in many ways here.

We come down to the big issue, though. In essence, it takes two-thirds—67 votes—to change the rules of the Senate. Because of a fight over three nominations that were illegally appointed, as determined by the Court of Appeals for the District of Columbia, and the President wants to continue to have them serve—which Senator MCCONNELL and many on this side oppose and don't think they should be confirmed—what the majority leader is proposing to do is to say, in essence, you can't block a vote on those nominations and require 60 votes; there only has to be 51.

He will propose that, and what will happen? The Parliamentarian of the Senate will rule that Senator MCCONNELL is correct, that the nomination is not prepared to be voted on because 60 votes weren't obtained, and the majority leader loses.

Then what does he intend to do? He intends to look to the Chair and say, I appeal the ruling of the Chair, and expects all his Members to presumably line up behind him and vote to overrule the rules of the Senate, overrule the independent Parliamentarian of the Senate. That is what he is talking about doing.

So when Senator MCCONNELL says he wants to break the rules to change the

rules, that is exactly what he means. That is exactly what we are talking about.

Stability in the Senate requires us not to change the rules willy-nilly when we have a tempest in a teapot, as these nominations are. There will no doubt be times when things get so intense over big issues that actions get taken, and history will record whether they are wise. But we don't need to be changing the rules of the Senate every time it becomes inconvenient for the majority leader. He has already done this once.

He changed the rules of the Senate when Senator DeMint was making a motion to get a vote, after he was denied the right to have a vote. The majority leader filled the tree, wouldn't allow votes, and he used the postcloture technique to force at least a vote relevant to that issue. The majority leader got tired of it, appealed it; the Chair ruled for Senator DeMint, and so he asked his colleagues to join him in overruling the Chair and changing the rules of the Senate. They backed him on that and that was done.

This gets to be a habit around here, and our side is not happy with the power grab from the top, from the majority leader, and how it is impacting everyday life in the Senate, and we are not going to go quietly on this one. It is a big deal and the Senate should avoid it.

I am pleased that at least we will have a conference Monday in which we can talk about the issue openly amongst ourselves and see if we can avoid what could be a serious constitutional crisis. I believe we need to cool our heads down a bit and understand that the nature of the Senate is the majority does not get everything it wants.

I was here, and I remember how the judges' situation developed. Judges have traditionally not been filibustered. There have been a few efforts at delaying votes and people were held up, but systematic filibusters were not at all part of the tradition of the Senate.

After President Bush was elected in 2000, the Democrats went to conference at a retreat somewhere. They had Marcia Greenberger, Laurence Tribe, and Cass Sunstein, three well-known liberal lawyers and professors. They came out, and then announced, We are changing the ground rules of confirmation.

The vast majority of President Bush's early nominees to the Court of Appeals were blocked. Highly qualified nominees, with great skill and ability, there was no basis to oppose them on merit. It went on for over 2 years, and others were being blocked.

As a result, then-Leader Frist threatened this kind of event. At the end, cooler heads prevailed, a compromise was reached, and the agreement was that we would not filibuster Federal judges unless extraordinary circumstances existed. Normally, we

would give an up-or-down vote to Federal judges. That is the way that was settled.

I would say with regard to the nominations we are looking at now, these three illegally appointed nominees present a pretty extraordinary circumstance.

We shouldn't sit here and go quietly when the President of the United States—without any legal basis, in my opinion—makes a recess appointment to avoid the confirmation process, and now we object to these people being confirmed after they were in office. After they were in office, after the court ruled they were illegally appointed, they continued to sit and continued to vote on issues important to Americans. They should not have done that. They should have followed the court's order, even if they previously thought they were legally appointed—which they weren't, pretty clearly, from the beginning—it was never close to being a legitimate recess appointment. I am worried about this. Hopefully cool heads will come together and work this out.

With regard to the traditional norms of the Senate that Senator MCCONNELL talked about, I have been in the Senate long before holds have been put on nominations. You don't move the nominations until you get questions answered relative to their appointment. Nominations don't just go smoothly and get voted the next week. There are a lot of reasons for that process.

This was raised at the beginning of the year. These issues were discussed and an agreement was reached. As part of the agreement, Senator REID said he wouldn't use the nuclear option if the Republicans agreed to certain things, and an agreement was reached. Senators LAMAR ALEXANDER and JOHN MCCAIN and others were in on the agreement and an agreement was reached.

Senator MERKLEY openly says now, Well, the agreement didn't work. Well, there is an agreement out there, it was agreed to, and Senator REID is now changing that agreement—changing the commitment he made in exchange for getting concessions from this side.

This isn't the breaking of a word like, You elect me majority leader and everything is going to be sweet and nice. This was a negotiated agreement of great intensity.

Senator MERKLEY and several other Senators were involved in the discussions, and an agreement was reached. The essence of it was concessions were made by the Republican side, and the Democratic leader accepted those concessions and promised he wouldn't use the nuclear option. Now he is threatening to use the nuclear option.

The nomination of Mr. Jones, to be Director of the Alcohol, Tobacco, and Firearms, a highly important agency is supposed to happen today. Maybe in committee they determined to move it through. I was a U.S. attorney for 12

years. The closest agency you deal with is the FBI, and you have to deal with them on a regular basis. They know how well you do your job, they know whether you are functioning well, and there is normally a good relationship and you try not to be critical of one another. This is what Mr. Oswald, former Special Agent in Charge of the FBI, wrote about Mr. Jones:

As a retired FBI senior executive, I am one of the few voices able to publicly express our complete discontent with Mr. Jones' ineffective leadership and poor service provided to federal law enforcement community without fear of retaliation or retribution from him.

Because he is no longer in office, he doesn't have any fear. He is telling the truth. He says he felt "morally compelled to make [the] committee aware of Mr. JONES' atrocious professional reputation within the federal law enforcement community in Minnesota's Twin Cities area."

This is the guy they want to promote to the head of the Alcohol, Tobacco, and Firearms.

The letter describes the frustration with Mr. JONES' "ineffective leadership and his lack of concern about matters and issues brought to his attention by each of us."

Each of us, being the other Federal agencies, like the Drug Enforcement Administration, the Secret Service, or the IRS.

Our common dissatisfaction with Jones' poor leadership, pathetic interaction, and insufficient prosecution support was the theme of many discussion during my tenure. . . . He consistently reacted defensively and often spoke to us disrespectfully, and occasionally with disdain.

Then he went on to note that after he became the U.S. Attorney in Minnesota, they prosecuted significantly less cases of every type. Forty percent fewer defendants were charged in 2012, when Mr. Jones was the U.S. attorney, than the previous year because he wouldn't prosecute the cases, and the Federal investigative agencies were up in arms about it.

This retired SAC tells the truth. I think he should be listened to. But President Obama is determined to make him the head of the ATF, involving leadership of gun enforcement, firearms, and weapons charges all over America.

We have already had the Fast and Furious scandal. So shouldn't the Senate ask questions about this? Should we rubberstamp this? They are rushing it through committee, trying to do it right now: Move him on. Get him confirmed. And anybody who stands in the way? Tough luck.

The majority leader is going to drive it through. He gets to decide who gets confirmed around here. He gets to decide what the rules are in the Senate. They are forgetting the effort they led in the last part of President Bush's term when they blocked John Bolton to be Ambassador to the United Nations. He was blocked by full filibuster by the Democratic Members of the Senate. The rules weren't changed

then, and the rules are not to be changed now.

We have a conference coming up Monday. Let's see if we can't work through it. Let's see if we can't work in a way that restores the Senate. The Senate is that saucer that is supposed to provide a cooling opportunity to slow down a rush to judgment. Should the Senate be compelled to confirm three members to lower official appointments in the Federal Government who were illegally appointed and continued to serve in their offices after they were so found? I don't think so. I don't think so. I don't think that dispute is such that it would lead the majority leader to break the rules of the Senate, to override the plain rules of the Senate through a procedure, which is not proper and very dangerous, to get his way on this matter.

There are other things that could go wrong if this goes forward. My impression from talking to my colleagues is that there are very deep feelings about this and people have had about enough of this. There have been all kinds of abuses here about how we conduct our business. We are not going to keep accepting that because when you accept that, the loyal opposition is eroded over a period of time consistently in its ability to exercise the little powers it has, and then the Senate is weakened. Then the Senate's role as the body that slows down problems, that stands up to ATF nominations, that stands up to NLRB illegal appointments, is eroded. We do not need to do that.

I know there is a lot of feeling here.

I see my colleague Senator HATCH. He has been through this for a long time and has seen these disputes. I have seen a few myself in my 16 years—not nearly as long as Senator HATCH, who chaired the Judiciary Committee and has been ranking member on that committee. But what I will say is that this situation does not justify the nuclear option. It does not. It is a dangerous thing, and it can be addictive for the majority leader—every time he is confronted by someone legitimately using the rules of the Senate to raise questions about the majority's agenda, that they are overruled and the rule is changed so the majority leader can advance his agenda. That is what the issue is about.

I ask my Democratic colleagues, let's slow down, let's not go this way. Maybe this conference Monday will help us reach an accord and avoid a very dangerous event for the history of the Senate.

Mr. MERKLEY. Will my colleague yield for a question?

Mr. SESSIONS. I yield for a question.

Mr. MERKLEY. I have in front of me the list of the number of times the application of a rule was changed from the precedent. It was done each time under a simple majority structure, and it was done 10 times since 1985.

I pointed out earlier—I am not sure if my colleague was on the floor—that seven of these times this was done

under Republican leadership. So seven times Republicans came to the floor and said: We are going to change the application of a rule under redirection of the precedent or overruling of the precedent. I want to ask if the Senator is familiar with that because the way he was speaking, it sounded as if this conversation is about something—a procedure that had never been done. Yet it was done seven times since 1985 by my Republican colleagues.

Mr. SESSIONS. I said it is a dangerous trend and it can be addictive and it can undermine the nature of the Senate. I did not say it never happened. But to my knowledge, I would like for the Senator to list for me the number of times since 1985 the majority leader has gone before the Parliamentarian and the Presiding Officer and actually altered the rules by a vote of the Senate, overruling the Chair?

Mr. MERKLEY. I will be happy to do that. I have that in front of me. Let's start on December 11, 1985:

The Senate allows a conference report on the basis that everything included is "relevant," even though multiple provisions have been ruled to violate the scope of the conference committee's authority.

The ruling of the Chair changing the precedent was reversed.

This happened again in September—Mr. SESSIONS. Was there a vote on that?

Mr. MERKLEY. Yes.

Mr. SESSIONS. How many votes? I am curious. I know it was done before. The big time that I recall, I say to Senator MERKLEY, was the one over Federal judges, similar to this. At the end, cooler heads prevailed, a compromise was reached, and a very significant rule of the Senate was not altered.

Some of these could be technical rulings of the Chair that are not that significant, but I am interested in seeing what others the Senator might mention. I am particularly interested if there was an actual vote of the body, by the Senate.

Mr. MERKLEY. Yes. I can assure my colleague that each and every one of these involved an actual vote, and each and every one of these 10 occasions did reverse the previous precedent. That happens in two fashions.

Mr. SESSIONS. Will the Senator offer that for the record?

Mr. MERKLEY. Absolutely.

Mr. SESSIONS. I would like to look at that and see where we are.

Senator HATCH is here now.

Mr. MERKLEY. I will get the Senator a personal copy.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

September 25, 1986: The Senate establishes that procedural motions or requests do not constitute speeches for purposes of the two-speech rule (ruling reversed 5-92).

December 11, 1985: The Senate allows a conference report on the basis that everything included is "relevant," even though multiple provisions have been ruled to violate the scope of the conference committee's authority (ruling reversed 27-68).

April 28, 1987: The Senate establishes that the Presiding Officer should defer to the Budget Committee Chair on whether an amendment violates Section 201(i) of the Budget Act (ruling sustained 50-46).

May 13, 1987: The Senate establishes that a Senator may not decline to vote when it is done for the purposes of delaying the announcement of that vote (ruling reversed 46-54).

March 16, 1995: The Senate allows legislating on appropriations bills (ruling reversed 42-57) [this precedent was reversed in 1999 by resolution].

May 23, 1996: The Senate establishes that a budget resolution with reconciliation instructions for a measure increasing the deficit is appropriate (ruling sustained 53-47).

October 3, 1996: The Senate broadens the scope of allowable material in conference reports (ruling reversed 39-56) [this precedent was reversed in 2000 by language in an appropriations bill].

June 16, 1999: The Senate establishes that a motion to recommit a bill with instructions to report back an amendment had to be filed before the amendment filing deadline (ruling sustained 60-39).

May 17, 2000: The Senate establishes that it is the Chair's prerogative to rule out of order non-germane precatory (sense-of-the-Senate or -of-Congress) amendments (ruling reversed 45-54).

October 6, 2011: The Senate establishes that motions to suspend the rules in order to consider non-germane amendments post cloture are dilatory and not allowed (ruling reversed 48-51).

Mr. SESSIONS. Reclaiming the floor, Mr. President, I appreciate the Senator's sharing that. We will study them. It is absolutely a practice that can occur, but it is a very dangerous practice. The Senate is a place of a certain amount of collegiality and a certain amount of good judgment and understanding and respect for the body. Sometimes you can carry out a procedure that may be dubious but within the realm of acceptable procedures, and sometimes you can feel and understand that is a dangerous alteration of the precedents of the Senate. That is where I am afraid we are with this vote.

Mr. HATCH. Will the Senator yield?

Mr. SESSIONS. I will yield for a question from Senator HATCH.

The PRESIDING OFFICER (Mr. BEGICH). The Senator from Utah.

Mr. HATCH. It makes a difference between issues where the Chair has been overruled rather than the nuclear option which changes the rule, which breaks the rule and changes it. That is a significant difference. That is what is being done here by a mere majority vote.

The majority wants to change a very important rule. If we go down that road, I am going to tell you, the majority is going to be a very sorry majority in the future because they may be a minority. This body has always protected the rights of the minority, whether Democratic or Republican. It is what made it the greatest body in the world. We are about to destroy that for no good reason.

Mr. SESSIONS. Mr. President, I will be pleased to yield to the Senator from Utah and look forward to hearing his

remarks. He is a man of great expertise on this particular issue.

Mr. HATCH. I thank my colleague.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Let me say that there are differences in how the rules are interpreted from time to time. From time to time the Chair has been overruled. I have been here when it has. I have only been here 37 years, and I have never seen anything like this in the whole 37 years.

I have to say that this is a dangerous thing to do. I predict that if our colleagues on the other side—all of whom I care for—if they do this, they are going to rue the day they did it. It is that simple. They can say: Oh, it is just an eensy-teeny little change. It is not. It is a monumental change. There is going to be a tremendous price to pay for it, to the detriment of our country—it is just that simple—and certainly to the detriment of the Senate, the greatest deliberative body in the world.

It is hard for me to understand, over two NLRB partisans whom the President just recess-appointed, ignoring the rules of the Senate, and over Cordray, who probably under any other circumstances would get through easily, but there is very good reason why he should not go through this way.

OBAMACARE

Mr. President, I rise to speak on what is known as ObamaCare and what the Obama administration did last week, hoping the American people were not paying attention, that impacts huge parts of the President's signature domestic policy achievement as our Nation was celebrating the Fourth of July. I am talking about the administration's decision to suspend for a year—conveniently past next year's election, which is very interesting to me—enforcing what is known as the employer mandate, the requirement that businesses offer insurance to their employees or face the penalty. And then a rule was issued by the Department of Health and Human Services last Friday stating that it would not verify people's incomes before giving out premium subsidies. My gosh, we have fraud all over the Federal Government, and they do something this stupid and undesirable?

I am certainly glad employers got some relief. It is quite a message from the Obama administration, quite a message the Obama administration is sending the struggling families and individuals who will get no relief from this monstrosity of a law and its burdensome individual mandate tax. Republicans in Congress believe this is unfair as such. Senator THUNE spearheaded a letter to President Obama, which I enthusiastically signed, urging him to permanently delay the whole entire law and treat individuals the way he is going to treat businesses. I am glad it has been put over for businesses, even though I question why it was put over for this next year. But



why not do it for the individuals who are suffering from it? If it is good for the goose, it should be good for the gander. Shouldn't the Obama administration give the same relief to everyone?

Furthermore, I would like to point out that we have always known this law was a budget buster. With the employer mandate delayed, I have joined with a group of Republican committee leaders in the House and Senate asking for the Congressional Budget Office to get us an updated cost estimate of the bill. I can't say what CBO will find, but I have a feeling that ObamaCare's price tag will continue to soar. It is already off the charts. Everybody knows it is an abominable bill, and that includes Democrats as well.

What happened last week is just the latest in a series of confirmations that the President's health care is simply not ready for prime time. Unfortunately, it is the American people who pay the price for the largest expansion of government in generations. They will pay the price through higher taxes. They will pay the price through higher health care costs and insurance costs. They will pay the price with more and more government regulations and debt. They will pay the price when they are forced into what are called exchanges that are simply not ready and unlikely to be ready in the near future.

This law, which was jammed through Congress on a purely partisan vote, is simply too big to work. The lesson is that asking government to do this much—when those of us who fought it tooth and nail said at the time it amounts to a government takeover of one-sixth of the American economy—will not succeed and cannot succeed. That is a lesson the Obama administration doesn't seem to get, doubling down on selling ObamaCare that is less popular today than when the President signed it into law. In fact, the White House is rolling out a massive multi-billion-dollar PR campaign using taxpayer dollars to try to convince the American people that it is all the administration promised, shaking down the health care industry, professional sports teams, and movie stars in the process.

Where is it going to end? What is the matter with this administration? Can't they just live with the facts and acknowledge that this is a dog? In fact, a cynic might argue that ObamaCare was designed to fail in order for the Federal Government to step in for a true, European-style single-payer system that many on the extreme left wanted all along. In other words, socialized medicine with the Federal Government controlling every aspect of our lives from a medicine and health-care standpoint.

Now it seems as though every day we learn about more and more problems with ObamaCare. What do we know about it less than 4 months out from the open enrollment in the Federal and State health insurance exchanges which are supposed to occur on October 1?

We have heard from countless experts who say the exchanges will be rife with issues once they are supposedly up and running. Indeed, those experts have predicted everything from "glitches" to "consumer horror stories."

Two GAO reports released in June confirm that the Obama administration is ill-equipped for the implementation of both the federally facilitated health insurance exchange and the so-called Small Business Health Option Program Exchange. And that is two reports from GAO saying the administration is ill-equipped to implement those federally facilitated health insurance exchanges. Citing the programs' delays and missed deadlines, the GAO concluded that there is potential for "implementation challenges going forward."

While we have been hearing about the problems with the exchanges for months now, we have not heard an explanation from the administration as to how—despite all of these reports—all of this is supposed to be up and running by October 1. I hope I am wrong, but I have a feeling come October millions of Americans are going to find themselves unable to navigate these waters.

Sadly, the problems with the exchanges aren't the only difficulties with ObamaCare. Over the last several months we have heard numerous reports about the problems at the Internal Revenue Service. Let's face it. The IRS has never been beloved. Indeed, millions of Americans loathe and fear the IRS, and the recent scandal surrounding the targeting of conservative groups has not helped the agency's reputation either.

At the heart of this recent scandal, there are claims by the IRS that they were simply unable to manage the increased workload that came with an influx of applications of groups applying for tax exempt status under 501(c)(4). According to the IRS officials, the increase in applications were so massive that examiners had to find new ways to categorize and screen the documents submitted by these groups. They say that was the main cause of the targeting scandal.

Let's assume these arguments are true for a moment. When all is said and done, the number of applications of groups applying for 501(c)(4) status increased by 1,700 over a 4-year period. The IRS was apparently so flummoxed by an increase of less than 2,000 applications that it had to resort to inappropriate and potentially illegal measures. Give me a break.

If this is true, the country is in real trouble. If the IRS cannot manage an increase of 1,700 applications of groups applying for tax exempt status, how will it handle its significant role in implementing ObamaCare or even handling the so-called premium supports? Under the so-called Affordable Care Act, premium subsidies—complex tax credits designed to defray the costs of purchasing health insurance based on

household income—will go to an estimated 7 million tax filers according to the Joint Committee on Taxation. Within 2 years, that number will nearly double. And they can't take care of 1,700 applications for 501(c)(4) that are basically and relatively simple?

In other words, the number of premium subsidy applications will jump from zero to 7 million in just 1 year. That is 7 million applications for people across a wide income spectrum claiming subsidies that did not exist before. Only God knows how many of those claims are going to be made fraudulently since they don't seem to be able to handle them.

Basically, the Obama administration would have us believe that while a 4-year increase of 1,700 applications for tax exempt status was enough to give the agency fits, it is perfectly capable of handling 7 million new filings for a brandnew health care entitlement. On top of that, they want us to believe they can continue processing these subsidies as they double in number over the first 2 years. Needless to say, I am more than a bit skeptical.

Of course, it is difficult to figure out exactly what the Obama administration expects the American people to believe when it comes to the IRS implementing ObamaCare. That is because despite all the upcoming deadlines, it is still not clear how the agency plans to fulfill this new responsibility; and despite numerous Congressional inquiries—as well as those from GAO and the Treasury Inspector General for Tax Administration, or TIGTA—no one really knows how the Affordable Care Act office in the IRS is going to work.

One of the few things we know for sure is that the person who headed the IRS division that was responsible for targeting conservative organizations now heads the division responsible for implementing ObamaCare. How lucky can we be? That is hardly a comforting thought. Make no mistake, processing these complex premium subsidies will not be a walk in the park. These credits are both advanceable and refundable—meaning they will be paid out first and verified later. Some have referred to this process as "pay and chase."

Many of my Democratic friends have referred to tax expenditures they don't like as "spending through the Tax Code." That label is usually not accurate, but when we are talking about refundable credits, it is precisely on target. The problem is that over the years, the IRS has struggled to administer these types of tax credits. One needs to look no further than the earned income tax credit, or the EITC, to see the inherent problems with refundable credits.

In a report issued this past April, TIGTA found that 21 to 25 percent of total EITC payments were improperly given out. If you assume that same percentage of improper payments will apply to the \$1 trillion we will spend on



ObamaCare premium subsidies—which is fair, due to the fact that the IRS has no way of verifying household income, and now the Department of Health and Human Services said it will not even try to verify a person's income—we could be looking at \$210 billion to \$250 billion in improper payments over the next 10 years. When is it going to end? When are the taxpayers going to get a break? This administration doesn't seem to know how to get us there.

Some of that will be the result of fraud and some of it will simply be due to filing errors. Either way, if the IRS's track record with refundable credits is any indication, we are looking at hundreds of billions of dollars in improper payments when it comes to the ObamaCare premium subsidies. Now with the Obama administration abandoning any income verification, we are left with a policy that is little more than an honor system for hundreds of billions of dollars of premium subsidies.

I will say it again: An honor system at a time when the Finance Committee and the administration are trying to crack down on improper government payments both within the tax system and our Federal health programs. If the definition of insanity is doing the same thing over and over expecting different results, then this is the definition of insanity on steroids. Couple that with the already soaring pricetag of the subsidies and we have a disaster on our hands.

In his fiscal year 2012 budget, President Obama put the cost of the first year of premium subsidies at nearly \$16 billion. In his most recent budget, that number soared to nearly \$22 billion without any additional explanation.

Why are these costs going up? There are a number of possible explanations. For example, there is the fact that due to the cost imposed by ObamaCare, more and more employers are opting to drop coverage, thereby pushing more and more people into the exchanges subsidized by these very same tax credits. At the same time, we know in order to avoid providing health care benefits, many employers are moving employees into part-time work, which, once again, pushes more people into receiving premium subsidies in order to purchase health insurance.

Of course, there is the looming fact that despite the President's claims that his health care law would reduce the cost of health insurance, the cost of insurance premiums has continued to skyrocket. All of these are potential explanations of why the estimated cost of the premium subsidies has gone up in the President's budget.

Yesterday a group of my Senate colleagues and I sent a letter to Secretary Lew and Secretary Sebelius asking for an in-depth analysis as to how much of a burden the new health insurance exchanges will be on the Federal budget given the skyrocketing pricetag of these premium subsidies. This is a reasonable question given the magnitude of America's debt.

Between the dramatically increasing costs, the daunting tasks of administering these credits through the Tax Code, and now the administration is pulling back antifraud requirements, the chances for success are extraordinarily slim.

As I said earlier, this law is too big, too cumbersome, too inclusive, and too costly to work. I have never supported it, and for good reasons. What is most disconcerting is that it is the millions of Americans who work hard every day to pay their bills, put food on their tables, and send their children to school who will bear this burden. For their sake, the best solution is a permanent delay of the whole law—and not just for the business sector but for everybody. That is what we need to do.

We have to get rid of this pay-and-chase system that is going on right now where the government just pays in accordance under the honor code they described and later have to chase those who have defrauded the government. It is just unbelievable.

Well, look at the premium subsidies. These are tax credits in ObamaCare designed to defray the cost of purchasing health insurance. These are going to go to some 7 million tax filers in households earning as much as \$94,000 a year. How many people who are making much more than that will claim they are making less than \$94,000 a year? Well, if we look at the past, there is going to be a lot of them.

What is the IRS going to be able to do? They will not be able to approve it because they don't have the mechanisms to do it. My gosh.

The administration said they are just going to rely on the filer to self-report their income to get access to the credits. Give us a break. My gosh. Like I said, the projected figure for subsidy expenditures has gone from \$16 billion to \$22 billion in just a couple of years. It is mind-boggling that they get away with it. It is mind-boggling that the American people have not risen up in rebellion against this stupid bill, and it is mind-boggling to me how my colleagues on the other side continue to defend this monstrosity.

Every day we hear about more and more problems with it. Every day we hear about more and more costs. Every day we hear about more and more fraud. Every day we hear about people in the government who don't understand it and can't figure it out.

When are we going to grow up and realize this is a dog and it is hurting America? I will be honest. I believe within a year or two the President is going to throw his hands in the air and say: This is not working. We have to go to a single-payer system—in other words, socialized medicine where the government will control all of our lives and will determine who gets health care and who doesn't. I have to say that is where we are headed. I hope I am proven wrong in the future, but I know I am going to be proven right. I can just see it. If it happens, it will

have been done by our friends on the other side—100 percent—who voted for this dog. They don't seem to recognize it is eating America alive.

I don't understand it. I love my colleagues on the other side. We have been friends for a long time. I have been here 37 years. There are only two Senators in that 37-year period whom I thought had no real reason to be here. I have loved everybody else, some more than others, of course.

The fact is what is happening has happened because of the Democratic side of this floor, and we have to get some heroes over there to start standing and saying: We are not going down that road. We are not going to become socialism revisited, even though many of their supporters want that, as is evident to anybody who looks at it. When is our media going to take up and realize this is what is happening to our country and it is wrecking it. On top of that, we have this absolutely idiotic desire on the part of my friends on the other side to change the rules—to break the rule to change it.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BROWN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### TOO BIG TO FAIL

Mr. BROWN. Mr. President, there is broad agreement that overleveraged financial institutions significantly contributed, to put it mildly, to the 2008 financial crisis and that they were bailed out because everyone knows they are too big to fail.

Years later—5 years later now—there is an implicit assumption that the largest megabanks—the five or six largest banks in the country—are still too big to fail. That means the markets give them funding advantages that experts estimate are as high as 50 or 60 or 70 or even 80 basis points.

That means when they go in the capital markets, they can borrow money at close to 1 percent. Eighty-eight basis points is fourth-fifths of 1 percent. They can borrow money at a lower cost than virtually anyone else in our economy.

Studies from Bloomberg have shown that this can mean a subsidy of upward of \$80 billion to these five, six, seven megabanks—these large megabanks.

Last year, as a result, my colleague Senator VITTER and I began to push the banking regulators—the Federal Reserve, the Office of the Comptroller of the Currency, and the FDIC, the Federal Deposit Insurance Corporation—to use stronger capital and leverage rules to end this too-big-to-fail subsidy.

There is now bipartisan agreement that imposing more stringent capital

and leverage requirements for the largest financial institutions could help prevent the next financial crisis and prevent future bailouts.

Unfortunately, the Basel Committee—named after a city in Switzerland—responsible for the Basel III international capital rules adopted a mere 3-percent leverage ratio.

In 2007, the investment banks Bear Stearns and Lehman Brothers were leveraged 33 to 1 and 31 to 1, respectively. These institutions would have been compliant with the Basel III international leverage ratio, and yet each would have become insolvent, or nearly insolvent, if the value of their assets declined by as little as 3 percent. That meant they only had sort of 3 percent protection, and if their assets declined by more than 3 percent, they would be what you call underwater. They simply would be a failing, unsustainable institution or bank.

I am pleased to say that this week regulators finally went beyond these inadequate rules and proposed a 6-percent leverage ratio for insured banks. I said earlier, Senator VITTER and I had argued for this and were pushing the banking regulators to do what they, in fact, did this week.

The move is a necessary step in the right direction. It shows how far this conversation has gone in a short time. But there is more work to be done. Let me explain several things we can do now.

First, the number needs to be higher. The Wall Street Journal editorial board—not a group of people with whom I often agree or with whom I see eye to eye very often—wrote this morning about these rules:

[O]ur preference would be to go north of 6 percent.

To be higher.

Why not approach the capital levels that small finance companies without government backing are required by markets to hold, which can run into the teens?

They are required by markets. For the megabanks, the market does not quite respond the same way because of their economic and their political power.

Second, I am still concerned that banks can use risk weights and their internal models to game capital rules. This amounts to the banks determining for themselves—this is not some government body or some unaligned group of economists—this amounts to the banks determining for themselves how risky their assets are, thereby setting their own capital requirements.

The Financial Times said today the biggest banks plan to use “optimization” strategies—not more equity—to meet the new leverage ratio.

“We’re going to be able to pull a lot of levers,” said an executive at a large US bank on Wednesday. . . . Analysts at Goldman Sachs noted in research for clients that “banks have a lot of options to mitigate the impact.”

That is why we need simpler rules that cannot be gamed by Wall Street,

and this rule cannot be watered down by Wall Street lobbyists.

There is no reason agencies should not finalize these rules and begin implementing their rules tomorrow—not go through the long rules process. We cannot wait. Small businesses and families cannot afford to wait, neither can our economy.

Finally, there is more work to be done to rein in Wall Street megabanks. Senator VITTER and I have a bill that would do this—the bipartisan too big to fail act. It would restore market discipline by raising megabanks’ capital requirements and limiting the Federal safety net that supports them.

I have also proposed legislation called the SAFE Banking Act to cap the amount of nondeposit liabilities that any single megabank can have.

The regulators have begun to do their jobs. It is time for Congress to do its job. This week was a good week. It was a step in the right direction, but it is time to finish the job. It is time to end too big to fail once and for all.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

(The remarks of Mr. MCCAIN and Ms. WARREN pertaining to the introduction of S. 1282 are printed in today’s RECORD under “Statements on Introduced Bills and Joint Resolutions.”)

#### SAFE RETIREMENT ACT

Mr. HATCH. Mr. President, I ask unanimous consent to have printed in the RECORD the following seven letters expressing support for S. 1270, the Secure Annuities for Employee, SAFE, Retirement Act of 2013: Committee of Annuity Insurers, Great American Life Insurance Company, Insured Retirement Institute, Investment Company Institute, Metropolitan Life Insurance Company, National Association for Fixed Annuities, and the National Association of Insurance and Financial Advisors.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DAVIS & HARMAN LLP,  
Washington, DC, July 3, 2013.

Re SAFE Retirement Act of 2013.

Hon. ORRIN HATCH,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR HATCH: On behalf of the Committee of Annuity Insurers<sup>1</sup> I am writing to express the Committee’s appreciation of your effort to further the retirement security of American workers by introducing the SAFE Retirement Act of 2013. As the Act recognizes, Americans face many obstacles in preparing for and living in retirement. Prior to retirement, they must attempt to accumulate adequate savings while also un-

derstanding that at retirement they will need to convert those savings into an income stream that will last the rest of their lives.

There is no one approach that will fully address these challenges. Rather, Americans need a number of options to help them achieve their retirement goals. The introduction of legislation such as the SAFE Retirement Act is an important contribution to the current and future public dialogue on retirement security.

Of course, a key element of retirement security is guaranteed lifetime income. Life insurance companies and the annuities they issue pool the longevity risks of large groups of individuals and thereby provide guaranteed lifetime income to those individuals. Annuities can also help individuals accumulate retirement savings in a manner that suits their personal approach to saving. As a result, annuities are, and should remain, a key means of assuring retirement security, as the SAFE Retirement Act recognizes.

The Committee of Annuity Insurers commends you for your efforts on the SAFE Retirement Act, and we look forward to working with you and your staff to improve the retirement security of all Americans.

Sincerely,

JOSEPH F. MCKEEVER,  
Counsel to the Committee of Annuity Insurers.

GREAT AMERICAN  
LIFE INSURANCE COMPANY,  
Cincinnati, OH, July 3, 2013.

Re Safer Pension Act of 2013

Hon. ORRIN HATCH,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR HATCH: After participating in a NAFA call with Preston Rutledge on July 3, I am writing to express that I appreciate your effort to further the retirement security of American workers by introducing the Safer Pension Act of 2013. As the Act recognizes, Americans face many obstacles in preparing for and living in retirement. Prior to retirement, they must attempt to accumulate adequate savings. After they retire, they must address the challenge of assuring that the savings they accumulated while working will provide them with income for the rest of their lives.

There is no one approach that will fully address these challenges. Rather, Americans need a number of options to help them achieve their retirement goals. The introduction of legislation, such as the Safer Pension Act, is an important contribution to the current and future public dialogue on retirement security.

Of course, a key element of retirement security is guaranteed lifetime income. Life insurance companies and the annuities they issue pool the longevity risks of large groups of individuals and thereby provide guaranteed lifetime income to those individuals. Fixed annuities can also help individuals accumulate retirement savings in a manner that suits their personal approach to saving. As a result, annuities are, and should remain, a key means of assuring retirement security, as the Safer Pension Act recognizes.

The National Association for Fixed Annuities and its member companies commend you for introducing the Safer Pension Act and we look forward to working with you and your staff to improve the retirement security of all Americans.

Sincerely,

MALOTT W. NYHART,  
Divisional President, Single  
Premium/Financial Institutions Division.

<sup>1</sup> The Committee of Annuity Insurers is a coalition of 28 of the largest and most prominent issuers of annuity contracts, representing approximately 80% of the annuity business in the United States. The Committee was formed in 1981 to address federal legislative and regulatory issues relevant to the annuity industry and to participate in the development of federal tax and securities policies regarding annuities.

INSURED RETIREMENT INSTITUTE,  
Washington, DC, July 3, 2013.

Re SAFE Retirement Act of 2013

Hon. ORRIN G. HATCH,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR HATCH: The Insured Retirement Institute (IRI)<sup>1</sup> commends your leadership on increasing retirement security of American workers by introducing the SAFE Retirement Act of 2013. The current state of retirement savings readiness in America is at crisis levels and the need for Americans to insure against the risk of outliving their assets has never been greater.

Seventy-nine million Baby Boomers today face immediate and unprecedented retirement income challenges—challenges that simply did not exist in earlier generations. Research shows nearly half of Boomers, over 30 million Americans, are “at risk” for inadequate retirement income, not having sufficient guaranteed lifetime income. These challenges have been created by the shift from defined benefit plans to defined contribution plans, longer life spans, increased medical costs, and inadequate savings rates. In fact, for a married couple both age 65 now, a 60 percent chance exists that one spouse will live to age 90, and a 30 percent chance exists that one will live to age 95.

As a result of these needs, the public policy focus on enhancing retirement security in America has never been greater. Along with other retirement security legislative and regulatory initiatives, the SAFE Retirement Act is an important contribution to efforts to enable Americans to achieve financial security in their retirement years.

Annuities offered by IRI’s insurer, broker-dealer, and bank members provide retirees guaranteed lifetime income and should remain a key component of retirement financial planning, as the SAFE Retirement Act recognizes. While many Americans are at risk for having inadequate retirement income, according to IRI research, Baby Boomers who own insured retirement products, including all types of annuities, have higher confidence in their overall retirement expectations, with nine out of ten believing they are doing a good job preparing financially for retirement.

Because annuities help address numerous risks retirees face, including longevity risk and inflation risk, financial advisors and Boomers are increasingly seeing the need for lifetime income provided by annuities, particularly middle-income families who make up the bulk of annuity owners. A number of IRI research reports show that Boomers who own annuities have more confidence in their financial security in retirement and are using more annuities to meet their retirement income needs.

73 percent of annuity owners believe that annuities are a critical part of their retirement strategy.

Baby Boomer annuity owners are more likely to engage in positive retirement planning behaviors than Baby Boomer non-annuity owners, with 68 percent having calculated a retirement goal and 63 percent having consulted with a financial advisor.

Nine out of ten female Boomer annuity owners are confident they will have a comfortable retirement.

84 percent of financial advisors say they are having more retirement income discussions with clients.

71 percent of advisors say they had a client request to purchase an annuity during the last year.

For these reasons, IRI and its member companies commend you for introducing the SAFE Retirement Act. We support improvements to the current employer retirement

plan system resulting in greater simplification, increased participation and savings by workers, and access to lifetime income products within retirement plans.

As Congress considers tax reform, we appreciate your continued support of the current retirement security system. We look forward to working with you and your staff to improve the retirement security of all Americans.

Sincerely,

CATHERINE J. WEATHERFORD,  
President & CEO.

<sup>1</sup>The Insured Retirement Institute (IRI) is the leading association for the retirement income industry and has been called the “primary trade association for annuities” by U.S. News and World Report. IRI proudly leads a national consumer coalition of more than twenty-five organizations and is the only association that represents the entire supply chain of insured retirement strategies. Our members include major life insurers, broker-dealers, banks, asset managers and financial advisors. We currently have over 500 member companies and provide member benefits to more than 150,000 financial advisors and 10,000 home office financial professionals. As a not-for-profit organization, IRI provides an objective forum for communication and education, and advocates for sustainable retirement solutions Americans need to help achieve a secure and dignified retirement.

INVESTMENT COMPANY INSTITUTE,  
Washington, DC, July 9, 2013.

Hon. ORRIN HATCH,  
Ranking Member, Committee on Finance, U.S. Senate, Hart Office Building, Washington DC.

DEAR RANKING MEMBER HATCH: I am writing to applaud your ongoing efforts to strengthen the U.S. retirement system. You have championed throughout your career public policies that help Americans save for their retirement years. Nearly two decades ago, you authored, along with Sen. David Pryor (D-AK), the Pension Simplification Act of 1995. More recently, you strongly supported retirement savings plan improvements, including provisions in the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Pension Protection Act of 2006, which made permanent the increased contribution limits for IRAs and other qualified plans, including 401(k)s. Building upon the system’s tax incentives, plan regulations, and innovation, these improvements have helped Americans accumulate \$20.8 trillion for retirement, including \$11.1 trillion in defined contribution (DC) plans and individual retirement accounts (IRAs).<sup>1</sup> More than 80 million U.S. households have accumulated retirement savings under employment-based retirement plans and IRAs.<sup>2</sup>

We understand that you plan to introduce the SAFER Pension Act, which aims to build on the strengths and successes of the U.S. retirement system, so that it works even more effectively to help American workers and their families prepare for secure retirements. While we are still reviewing the draft language that was recently shared with us, we note that your bill targets several key areas for improving the system, such as: making it easier and more cost effective for small business owners to offer 401(k) retirement plans to their employees; encouraging employers to enroll workers automatically at higher levels of savings and to escalate the savings more substantially than is perceived appropriate under current law; and enabling greater use of electronic delivery of plan information and tools to help workers understand their savings options and make sound decisions.

We look forward to working with you and sharing our ideas for further improving these and other provisions in this important piece of legislation, to ensure their effectiveness and the product neutrality that has helped create our flexible and innovative retirement system.

Thanks to the strengths of our system, successive generations of American retirees have been better off than previous generations.<sup>3</sup> The Institute stands ready to assist you in continuing this trend by promoting greater retirement savings opportunities for American workers. With very best regards.

Sincerely,

PAUL SCHOTT STEVENS,  
President & CEO.

<sup>1</sup>See Investment Company Institute, “The U.S. Retirement Market, First Quarter 2013” (June 2013), available at [www.ici.org/info/ret\\_13\\_q1\\_data.xls](http://www.ici.org/info/ret_13_q1_data.xls).

<sup>2</sup>See Holden and Schrass, “The Role of IRAs in U.S. Households’ Saving for Retirement, 2012,” ICI Research Perspective 18, no 8 (December 2012), Figure 1, p. 3, available at [www.ici.org/pdf/per18-08.pdf](http://www.ici.org/pdf/per18-08.pdf).

<sup>3</sup>See Brady, Burham, and Holden, The Success of the U.S. Retirement System, Investment Company Institute (December 2012), pp. 10-14, available at [www.ici.org/pdf/ppr\\_12\\_success\\_retirement.pdf](http://www.ici.org/pdf/ppr_12_success_retirement.pdf).

METLIFE,  
Washington, DC, July 8, 2013.

Hon. ORRIN HATCH,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR HATCH: MetLife applauds your introduction of the Secure Annuities for Employee (SAFE) Retirement Act of 2013. In introducing this bill, you have highlighted the importance of guaranteed income throughout retirement for millions of Americans. We agree this is of critical importance.

The SAFER Pension Act also serves to increase attention to a number of key challenges, including the importance of stable pension benefit funding, the importance of lifetime income to retirement security, and the importance of regulatory simplification for plan sponsors, all of which strengthen the foundation of our overall retirement system.

For many Americans, worries about their financial future are intensified by weakening employer-based and public safety nets—and by inadequate levels of personal savings and retirement income protection. MetLife believes that policymakers, insurers and employers all play an important role in revitalizing and establishing programs that can provide certainty in today’s uncertain world.

In 1921, MetLife became the first life insurance company to develop and offer a group annuity contract to fund defined benefit plans and provide guaranteed income to employees at retirement. We have continued this tradition of innovation more recently with group annuity contracts designed to provide guaranteed income for defined contribution plans. We appreciate that the SAFER Pension Act has helped to highlight the positive role annuities can play, and look forward to working together in this retirement security reform effort.

Sincerely,

PETER R. PASTRE,  
Vice President.

NATIONAL ASSOCIATION  
FOR FIXED ANNUITIES,  
Milwaukee, WI, July 5, 2013.

Re Secure Annuities for Employee (SAFE) Retirement Act of 2013.

Senator ORIN HATCH,  
Hart Office Building,  
Washington, DC.

DEAR SENATOR: NAFA, the National Association for Fixed Annuities, applauds your

efforts to provide a safe and reliable pension plan for employees and supports the goals of the "Secure Annuities for Employee (SAFE) Retirement Act of 2013." Thank you, too, for recognizing the valuable role fixed annuities play to insure retirement. Our nation's retirement security depends upon commitments like yours so that America's workers can look forward to the retirement of their dreams with a guaranteed and steady income.

Providing state and local governments a fixed annuity option issued by an insurance company not only guarantees lifetime income, but the industry's record of strength and solvency also insures that pensions are protected from market crises and cannot be underfunded. In addition, the effective and vigorous regulation of the annuity industry by the state insurance departments has been demonstrated day after day and year after year by high consumer satisfaction and the ever increasing purchase of fixed annuities. The fixed annuity industry already secures the future for millions of American's and continues to be one of the most reliable and steady financial services sector throughout this country's history.

NAFA looks forward to continue working with your office as the bill progresses. NAFA members represent over 84% of the fixed annuities sold through independent distribution and its Board of Directors is pleased to support retirement income security for all Americans.

Sincerely,

KIM O'BRIEN,  
President & CEO.

NATIONAL ASSOCIATION OF  
INSURANCE AND FINANCIAL ADVISORS,  
Falls Church, VA, July 2, 2013.  
Re SAFER Pension Act of 2013.

Hon. ORRIN HATCH,  
Hart Office Building,  
Washington, DC.

DEAR SENATOR HATCH: The National Association of Insurance and Financial Advisors (NAIFA) applauds your continued leadership to encourage retirement savings. We look forward to working with you on the "Secure Annuities for Employee Retirement Pension Act of 2013" and other initiatives to improve the savings programs available, for both public and private employee participants.

Founded in 1890 as The National Association of Life Underwriters (NALU), NAIFA is one of the nation's oldest and largest associations representing the interests of insurance professionals from every Congressional district in the United States. NAIFA and its members recognize the importance of individuals and families planning and saving for retirement and the significance of employer sponsored plans as a necessary component of that planning, along with life insurance and annuity products. We also are supportive of efforts to assure that middle market investors continue to have access to professional services and advice and they have a choice of financial products that will meet their financial needs and objectives.

NAIFA looks forward to maintaining a continued dialogue with you, and members of Congress on both sides of the aisle, to assure employees, employers, and our members who provide services to them can effectively and affordably save for their retirement needs.

Thank you again for your leadership.  
Sincerely,

ROBERT O. SMITH, J.D.,  
CLU, ChFC, LIC,  
President.

#### 50TH ANNIVERSARY OF THE "GAME OF CHANGE"

Mr. COCHRAN. Mr. President, I am pleased to join the distinguished Senator from Illinois, Mr. KIRK, in submitting a resolution celebrating the 50th anniversary of Loyola University of Chicago's historic season as National Collegiate Athletics Association men's basketball champions. The season is also remembered for the historic matchup with Mississippi State University in the NCAA Tournament, which helped end racial segregation in college athletics.

The Mississippi State and Loyola teams, along with their coaches and school administrators, led with courage and sportsmanship and a love of the game of basketball. That contest a half century ago helped to move my State and our Nation forward in addressing the inequalities of our society.

I appreciate the legacy and inspiring example of these teams, and am pleased to cosponsor the resolution introduced today by Senators KIRK, DURBIN, and WICKER.

I ask unanimous consent to have printed in the RECORD a copy of the Clarion Ledger newspaper article from March 18, 2013, titled, "As March Madness nears, so does 50th anniversary of MSU's 'Game of Change'."

AS MARCH MADNESS NEARS, SO DOES 50TH  
ANNIVERSARY OF MSU'S "GAME OF CHANGE"  
(By Jerry Mitchell)

Loyola captain Jerry Harkness shakes hands with MSU captain Joe Dan Gold before the historic 1963 game.

As March Madness nears, so does the 50th anniversary of the "Game of Change," where the all-white Mississippi State University basketball team dodged a judge's injunction and the governor's wrath to play the integrated Loyola University of Chicago.

Those across the nation know more about Texas Western's 1966 defeat of Kentucky, becoming the first champion with five African-American starters (depicted in the 2006 film, *Glory Road*).

While that game, once and for all, settled the question of race on the court, MSU's game against Loyola also played a critical role. The blog, *The '60s at 50*, quotes from the March 25 edition of *Sports Illustrated*:

"Literally out of hiding to play Loyola the night before had come Mississippi State, the team that saddened the hearts of segregationists everywhere by agreeing—eagerly—to participate in a tournament open to Negroes. On the eve of his team's departure from Starkville, Coach Babe McCarthy got word that a sheriff was out with a court order that could keep the team in Mississippi. Like Little Eva skipping across the ice ahead of the bloodhounds, McCarthy skipped into Tennessee. University President Dr. D.W. Colvard vanished, too. Early Thursday morning an assistant coach verified that the coast was clear at the airport, hustled the team into a plane and away

it flew on a modern underground railroad in reverse."

McCarthy had faced a series of frustrations as MSU's basketball coach. His teams had dominated nationally, winning the SEC championship in 1959, 1961 and 1962—only to watch Kentucky represent the league in the postseason because Mississippi authorities prevented them from playing any integrated teams.

Former Clarion-Ledger sportswriter Kyle Veazey (currently with *The Commercial Appeal*) has penned a new book on the subject, *Champions for Change: How the Mississippi State Bulldogs and Their Bold Coach Defied Segregation*.

He was stunned to find out no one had written the story and decided to write it himself.

When the question of playing an integrated team arose in 1959, MSU's president at the time, Ben Hilbun, received mail 3-to-1 in favor of keeping the team at home.

Four years later, the mail ran 3-to-1 in favor of playing, Veazey said. "Sports helped personalize the integration issue when it was so often being characterized by polarizing figures."

He suspects the 1959 and 1962 teams could have won the national championship if permitted to go.

In the 1962-1963 season, the Loyola team, with four African-American starters, faced its own difficulties, encountering vitriol and jeering from some fans during games in the South.

Before leaving for the big game in March 1963, Loyola players received hate mail from the Ku Klux Klan, according to ESPN.

Photographers snapped the legendary picture of Loyola captain Jerry Harkness and MSU captain Joe Dan Gold shaking hands at half court. (Harkness told USA TODAY he decided to play basketball his senior year after a visitor to the Harlem gym urged him to play. That visitor? Baseball legend Jackie Robinson.)

Loyola defeated MSU 61-51 on the way to winning the national championship in a game watched in person by a little-known boxer named Cassius Clay.

Throngs of MSU fans surrounded their team arriving at the airport, and a survey afterward found that Mississippians overwhelmingly favored letting MSU play the game.

Sports began to change hearts in a way that laws couldn't, Veazey said. "It was an example of Mississippi doing something right when it was doing so many other things wrong. It showed Mississippians that progress could happen, that men like Babe McCarthy and (MSU President) Dean Colvard could be courageous—and successful."

#### MAINE FIREFIGHTERS COMMEMORATION

Ms. COLLINS. Mr. President, every day across this country, firefighters quietly put their lives on the line in order to protect the communities in which they serve. Few firefighters better exemplify the selfless qualities that

characterize this select group of public safety personnel than those in Franklin County, ME, who recently rushed to the aid of their Canadian neighbors to help combat a deadly fire in the border town of Lac-Megantic, Quebec. I rise today to recognize those firefighters from the Maine towns of Chesterville, Eustis, Farmington, New Vineyard, Phillips, Strong, and Rangeley.

In the early morning hours of Saturday, July 6, 2013, a freight train carrying hundreds of thousands of gallons of crude oil was sent hurtling toward Lac-Megantic, a small, picturesque Canadian village located only 30 miles from the Maine border. The train derailed in the center of town, leveling several blocks and killing numerous residents. This unthinkable loss has touched every member of that close-knit community. My heart goes out to the family and friends of the victims of this tragedy, and my thoughts and prayers are with the residents of Lac-Megantic during this time of mourning. Yet, out of this terrible calamity, I was exceedingly heartened to hear the stories of more than 30 firefighters in nearby Maine who answered their Canadian neighbors' call and reported for duty.

Within mere hours of the accident, the Franklin County Emergency Management Agency had alerted seven area fire departments, and the Maine firefighters were at the scene. Upon arriving in Lac-Megantic, these firefighters overcame tremendous obstacles in order to combat the flames. The initial blasts had severed the town's phone lines, power, and water supply, leaving Canadian firefighters unable to use the fire hydrants. Maine fire trucks, equipped with the capability of drawing water directly from the nearby lake, allowed firefighters to cool off the remaining fuel-laden cars that were in danger of combusting, likely averting additional destruction.

The response of the Maine firefighters demonstrates the best qualities of international cooperation as well as the tenets of the brotherhood of firefighters. Maine and eastern Canada are bound together by history, family ties, and friendship, and that special relationship was clearly evident on the morning of July 6. Despite challenges posed by incompatible hose couplings, different radio systems, and even a language barrier in French-speaking Quebec, Maine and Canadian firefighters worked side-by-side to quickly and effectively douse the flames and mitigate the damage caused by this dreadful accident.

The valiant and selfless efforts of these Maine firefighters are unquestionably worthy of our respect and gratitude. This unassuming group of first responders never thought twice about helping their Canadian neighbors and fellow firefighters. I applaud the firefighters of Chesterville, Eustis, Farmington, New Vineyard, Phillips, Strong, and Rangeley, as well as the effective coordination of these depart-

ments by the Franklin County Emergency Management Agency. Truly, we can feel secure knowing these heroes are always willing to answer the call for help.

#### TRIBUTE TO CYNTHIA M.A. BUTLER-McINTYRE

Ms. LANDRIEU. Mr. President, my friend, Mrs. Cynthia M.A. Butler McIntyre, will be retiring her role as the national president of Delta Sigma Theta Sorority, Inc, this year. She has served as president since July 2008, and has been a great asset to the organization.

Mrs. McIntyre became a member of Delta Sigma Theta on November 30, 1973, and has served as a leader at the local, State, regional, and national levels. Mrs. McIntyre has an impressive professional resume that includes director of Human Resources for the Jefferson Parish Public School System in Harvey, LA, kindergarten teacher, assistant principal, summer school principal, and personnel administrator in her school district.

Her professional and honorary degrees reflect her passion for education. She received a bachelor of arts in early childhood education from Dillard University and a master of education in curriculum and instruction as well as educational administration from the University of New Orleans. She also received an honorary doctorate of divinity degree in religious education from the Louisiana Bible College.

Under the leadership of Mrs. McIntyre, Delta Sigma Theta Sorority has partnered with Water in Education International, WEI, to open The Cynthia M.A. Butler-McIntyre Campus in Cherette, Haiti which is dedicated to providing access to clean water for children. Members of Delta Sigma Theta Sorority have donated funds to support the Clean Water Haiti Fund and under Mrs. McIntyre's direction, the sorority is set to open a new elementary school in Haiti this summer.

Mrs. McIntyre is a national leader who currently serves on the board of the New Orleans Convention Center and the Martin Luther King, Jr. Task Force. Previously, she served as executive director of the Tech-Prep Summer Program at Delgado Community College in New Orleans and has worked as the assistant coordinator of field experiences and college education supervisor for early childhood student teaching experiences for the University of New Orleans. In 2011, she was appointed by President Barack Obama to the Christopher Columbus Fellowship Foundation board of trustees.

Delta Sigma Theta Sorority has truly benefitted from Mrs. McIntyre's leadership as a pioneer of education reform. Her accolades include Distinguished Delta of the Year, Distinguished Public Servant Award, MLK Outstanding Activist Recognition, Hall of Fame, Distinguished Women of Honor, Who's Who in American Education, YMCA Role Model Recognition,

Elementary Assistant Principal of the Year, and Teacher of the Year, just to name a few.

Delta Sigma Theta Sorority will have big shoes to fill in the absence of their president, Mrs. McIntyre. She has made invaluable contributions to the state of education, and her uncompromised leadership has impacted communities, nationally and internationally. I wish her continued success for the future.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

#### ADDITIONAL STATEMENTS

##### TRIBUTE TO JULIUS CIACCIA

• Mr. BROWN. Mr. President, I wish to congratulate Mr. Julius Ciaccia, executive director of the Northeast Ohio Regional Sewer District on his election as president of the National Association of Clean Water Agencies, NACWA.

Mr. Ciaccia is an accomplished leader and committed environmental steward who has played a prominent role in the water industry, exemplifying what it means to be a public servant. He is ideally suited to serve as president of one of the Nation's leading proponents of responsible policies that advance clean water. Mr. Ciaccia has served the people of the Cleveland area for decades, and in this new role, will continue to ensure that the Nation's clean water agencies continue to protect public health and improve the environment.

Mr. Ciaccia began his career in public utilities in 1977 when he was appointed as assistant director of the Public Utilities Department for the city of Cleveland. In 1979, he joined the leadership of the city's Division of Water where he served as both deputy commissioner and commissioner until 2004.

During some 30 years with the city of Cleveland's Division of Water, Mr. Ciaccia oversaw the management of more than \$1 billion worth of capital improvement projects and maintained the agency's favorable financial position. He was appointed director of the city's Department of Public Utilities in 2004 exercising oversight of the water, sewer collection, and public power systems, with a focus on developing comprehensive financial plans and supporting revenue enhancement initiatives.

Mr. Ciaccia began his current role at the Northeast Ohio Regional Sewer District, NEORS, in 2007. In his current role at the district, he oversees all aspects of managing one of the Nation's largest wastewater management utilities. Under his leadership, the district has received two awards from the Commission on Economic Inclusion, including a 2009 award for Supplier Diversity, which highlights the success of



his initiative to craft and implement a supplier inclusion program. In 2012, the NEORSD was awarded by the Commission for Senior Management Inclusion, recognizing the diversity of senior staff.

As the district's executive director, Mr. Ciaccia was responsible for confirming their consent decree for a long-term control plan to significantly reduce overflows from combined sewers, as well as the successful development and implementation of a new Regional Stormwater Management Program. Among Mr. Ciaccia's many accomplishments as executive director of NEORSD is the transformation of the district's culture to one of transparency and exceptional financial management.

As a member of NACWA's board of directors, Mr. Ciaccia has served as the secretary, treasurer, and vice president. Mr. Ciaccia has shared his time, passion, energy and ideas to carry out the objectives of the Clean Water Act.

It is my pleasure to congratulate Julius Ciaccia on becoming president of NACWA. I am certain his actions will ensure continued water quality progress for the Cleveland area, the State of Ohio and the Nation.●

#### 2013 NATIONAL BOY SCOUT JAMBOREE

● Mr. ROCKEFELLER: Mr. President, right now tens of thousands of Boy Scouts are gathering in the adventure-filled mountains of southern West Virginia for the 2013 National Scout Jamboree.

At the Summit Bechtel Reserve in Fayette County beginning on July 15, Scouts from across the country will challenge themselves—with biking, swimming, whitewater rafting, zip lining, and rock climbing. But they also will challenge themselves in ways new to the National Jamboree—by giving back to local communities.

For the first time ever, the Jamboree is engaged in a community service effort, one that has ignited in extraordinary ways in West Virginia. Over a 5-day period, up to 40,000 Scouts will work with groups in 9 counties on more than 350 projects—involving wellness, arts, education, infrastructure and beautification—totaling hundreds of thousands of service hours.

It is the biggest community service initiative of its kind in the country. It is an inspiration. And it speaks to the heart of West Virginia, a State where service is deep-rooted in our people; where “neighbor helping neighbor” is more than an idea—it is a way of life.

It also speaks to the heart of the Boy Scouts of America, which has a long tradition of community service and dedicates virtually countless hours of volunteer work year round. During the 2013 Jamboree, Scouts from ages 12 to 18 and from every State in the Union will be living out the Scout oath, “To help other people at all times.”

Today I applaud everyone involved with the Reaching the Summit Com-

munity Service Initiative—the Boy Scouts who built this idea, the Citizens Conservation Corps of West Virginia for bringing together all the pieces to make it possible, the many organizations on the ground making a difference side-by-side with our Scouts, and the local communities supporting them. This initiative will make a tremendous difference in West Virginia communities, but it means more than that. It means that thousands of bright young Scouts will continue to experience the unparalleled feeling that comes with helping others.●

#### MESSAGE FROM THE PRESIDENT

A message from the President of the United States was communicated to the Senate by Mr. Williams, one of his secretaries.

#### EXECUTIVE MESSAGE REFERRED

As in executive session the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination which was referred to the Committee on Homeland Security and Governmental Affairs.

(The message received today is printed at the end of the Senate proceedings.)

#### MESSAGE FROM THE HOUSE

#### ENROLLED BILLS SIGNED

At 2:42 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 251. An act to direct the Secretary of the Interior to convey certain Federal features of the electric distribution system to the South Utah Valley Electric Service District, and for other purposes.

H.R. 254. An act to authorize the Secretary of the Interior to facilitate the development of hydroelectric power on the Diamond Fork System of the Central Utah Project.

H.R. 588. An act to provide for donor contribution acknowledgments to be displayed at the Vietnam Veterans Memorial Visitor Center, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore (Mr. LEAHY).

#### MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 1292. A bill to prohibit the funding of the Patient Protection and Affordable Care Act.

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-2233. A communication from the Chairman of the Council of the District of Colum-

bia, transmitting, pursuant to law, a report on D.C. Act 20-91, “Fiscal Year 2013 Revised Budget Request Temporary Adjustment Act of 2013”; to the Committee on Homeland Security and Governmental Affairs.

EC-2234. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 20-92, “Saving D.C. Homes from Foreclosure Enhanced Temporary Amendment Act of 2013”; to the Committee on Homeland Security and Governmental Affairs.

EC-2235. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 20-93, “Teachers’ Retirement Amendment Act of 2013”; to the Committee on Homeland Security and Governmental Affairs.

EC-2236. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 20-94, “Attendance Accountability Amendment Act of 2013”; to the Committee on Homeland Security and Governmental Affairs.

EC-2237. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 20-95, “Fire and Casualty Amendment Act of 2013”; to the Committee on Homeland Security and Governmental Affairs.

EC-2238. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled, “Sufficiency Review of the Reasonableness of the District of Columbia Water and Sewer Authority’s (DC Water) Fiscal Year 2013 Revenue Estimate totaling \$447,479,008”; to the Committee on Homeland Security and Governmental Affairs.

EC-2239. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled, “District of Columbia Agencies’ Compliance with Fiscal Year 2012 Small Business Enterprise Expenditure Goals”; to the Committee on Homeland Security and Governmental Affairs.

EC-2240. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled, “Audit of the District of Columbia Boxing and Wrestling Commission”; to the Committee on Homeland Security and Governmental Affairs.

EC-2241. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the Food and Drug Administration’s report relative to the Fourth Review of the Backlog of Postmarketing Requirements and Postmarketing Commitments; to the Committee on Health, Education, Labor, and Pensions.

EC-2242. A communication from the Surgeon General, Department of Health and Human Services, transmitting the National Prevention, Health Promotion and Public Health Council’s 2013 annual status report; to the Committee on Health, Education, Labor, and Pensions.

EC-2243. A communication from the Director, Directorate of Construction, Occupational Safety and Health Administration, transmitting, pursuant to law, the report of a rule entitled “Cranes and Derricks in Construction: Revising the Exemption for Digger Derricks” (RIN1218-AC75) received during adjournment of the Senate in the Office of the President of the Senate on July 2, 2013; to the Committee on Health, Education, Labor, and Pensions.

EC-2244. A communication from the Program Manager, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled “Privacy Act; Implementation” (45 CFR Part 5b) received during adjournment of the Senate in



the Office of the President of the Senate on June 28, 2013; to the Committee on Health, Education, Labor, and Pensions.

EC-2245. A communication from the Program Manager, Health Resources and Services Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Organ Procurement and Transplantation Network" (RIN0906-AA73) received in the Office of the President of the Senate on July 8, 2013; to the Committee on Health, Education, Labor, and Pensions.

EC-2246. A communication from the Director of Regulations and Policy Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Listing of Color Additives Exempt From Certification; Reactive Blue 246 and Reactive Blue 247 Copolymers; Confirmation of Effective Date" (Docket Nos. FDA-2011-C-0344 and FDA-2011-C-0463) received during adjournment of the Senate in the Office of the President of the Senate on July 3, 2013; to the Committee on Health, Education, Labor, and Pensions.

EC-2247. A communication from the Federal Register Liaison Officer, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Importer Permit Requirements for Tobacco Products and Processed Tobacco, and Other Requirements for Tobacco Products, Processed Tobacco, and Cigarette Papers and Tubes" (RIN1513-AB37) received in the Office of the President of the Senate on July 8, 2013; to the Committee on the Judiciary.

EC-2248. A communication from the Director, Administrative Office of the United States Courts, transmitting, pursuant to law, an annual report to Congress concerning intercepted wire, oral, or electronic communications; to the Committee on the Judiciary.

EC-2249. A communication from the Director, National Legislative Commission, The American Legion, transmitting, pursuant to law, a report relative to the financial condition of The American Legion as of December 31, 2012 and 2011; to the Committee on the Judiciary.

EC-2250. A communication from the Acting Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to section 36(c) of the Arms Export Control Act (DDTC 13-102); to the Committee on Foreign Relations.

EC-2251. A communication from the Acting Under Secretary of Defense (Personnel and Readiness), transmitting a report on the approved retirement of Vice Admiral Scott R. Van Buskirk, United States Navy, and his advancement to the grade of vice admiral on the retired list; to the Committee on Armed Services.

EC-2252. A joint communication from the Secretary of the Interior, the Secretary of State, and the Secretary of Defense, transmitting a legislative proposal relative to the Compact of Free Association between the Government of the United States of America and the Government of Palau; to the Committee on Energy and Natural Resources.

EC-2253. A communication from the Assistant General Counsel for Legislation, Regulation and Energy Efficiency, Department of Energy, transmitting, pursuant to law, the report of a rule entitled "Energy Efficiency Design Standards for New Federal Commercial and Multi-Family High-Rise Residential Buildings" (RIN1904-AC60) received in the Office of the President of the Senate on July 9, 2013; to the Committee on Energy and Natural Resources.

EC-2254. A communication from the Secretary of Veterans Affairs, transmitting,

pursuant to law, a report relative to expenditures from the Pershing Hall Revolving Fund; to the Committee on Veterans' Affairs.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mrs. SHAHEEN, from the Committee on Appropriations, without amendment:

S. 1283. An original bill making appropriations for the Legislative Branch for the fiscal year ending September 30, 2014, and for other purposes (Rept. No. 113-70).

By Mr. HARKIN, from the Committee on Appropriations, without amendment:

S. 1284. An original bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2014, and for other purposes (Rept. No. 113-71).

## EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of nominations were submitted:

By Mr. LEAHY for the Committee on the Judiciary.

Byron Todd Jones, of Minnesota, to be Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Stuart F. Delery, of the District of Columbia, to be an Assistant Attorney General.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. PAUL:

S. 1278. A bill to prohibit certain foreign assistance to the Government of Egypt as a result of the July 3, 2013, military coup d'etat; to the Committee on Foreign Relations.

By Ms. LANDRIEU:

S. 1279. A bill to prohibit the revocation or withholding of Federal funds to programs whose participants carry out voluntary religious activities; to the Committee on Homeland Security and Governmental Affairs.

By Ms. STABENOW (for herself, Mr. THUNE, Mr. BLUNT, Mr. COCHRAN, Mr. COONS, Mr. INHOFE, Ms. KLOBUCHAR, and Mr. WYDEN):

S. 1280. A bill to amend the Internal Revenue Code of 1986 to provide for the deductibility of charitable contributions to agricultural research organizations, and for other purposes; to the Committee on Finance.

By Mr. BLUMENTHAL:

S. 1281. A bill to prohibit discrimination on the basis of military service, and for other purposes; to the Committee on Veterans' Affairs.

By Ms. WARREN (for herself, Mr. McCain, Ms. CANTWELL, and Mr. KING):

S. 1282. A bill to reduce risks to the financial system by limiting banks' ability to engage in certain risky activities and limiting conflicts of interest, to reinstate certain Glass-Steagall Act protections that were repealed by the Gramm-Leach-Bliley Act, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mrs. SHAHEEN:

S. 1283. An original bill making appropriations for the Legislative Branch for the fiscal year ending September 30, 2014, and for other purposes; from the Committee on Appropriations; placed on the calendar.

By Mr. HARKIN:

S. 1284. An original bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2014, and for other purposes; from the Committee on Appropriations; placed on the calendar.

By Ms. BALDWIN:

S. 1285. A bill to amend the Small Business Investment Act of 1958 to enhance the Small Business Investment Company Program and provide for a small business early-stage investment program; to the Committee on Small Business and Entrepreneurship.

By Mr. ROCKEFELLER (for himself, Mr. WHITEHOUSE, and Mr. FRANKEN):

S. 1286. A bill to encourage the adoption and use of certified electronic health record technology by safety net providers and clinics; to the Committee on Finance.

By Ms. STABENOW (for herself, Mr. BLUNT, Mr. BROWN, and Mr. ROBERTS):

S. 1287. A bill to amend the Internal Revenue Code of 1986 to raise the limitation on the election to accelerate the AMT credit in lieu of bonus depreciation for 2013; to the Committee on Finance.

By Mr. GRASSLEY (for himself, Mr. COBURN, and Mr. RUBIO):

S. 1288. A bill to amend rule 11 of the Federal Rules of Civil Procedure to improve attorney accountability, and for other purposes; to the Committee on the Judiciary.

By Mr. COCHRAN (for himself and Mr. WICKER):

S. 1289. A bill to retain the existing vehicle weight limitations for vehicles traveling along any segment of U.S. Highway 78 within Mississippi after such segment is incorporated into the Interstate Highway System; to the Committee on Environment and Public Works.

By Ms. KLOBUCHAR (for herself and Ms. HIRONO):

S. 1290. A bill to protect victims of stalking from gun violence; to the Committee on the Judiciary.

By Mr. REED (for himself, Mr. COONS, and Mr. WHITEHOUSE):

S. 1291. A bill to strengthen families' engagement in the education of their children; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CRUZ (for himself, Mr. INHOFE, Mr. RISC, Mr. LEE, Mr. PAUL, Mr. BLUNT, Mr. BARRASSO, Mr. RUBIO, Mr. ISAKSON, Mr. HELLER, Mr. BURR, Mr. TOOMEY, Mr. CORNYN, Mr. MCCONNELL, Mr. ENZI, Mr. WICKER, Mrs. FISCHER, Mr. MORAN, Mr. VITTER, and Mr. ALEXANDER):

S. 1292. A bill to prohibit the funding of the Patient Protection and Affordable Care Act; read the first time.

By Mr. MERKLEY:

S. 1293. A bill to establish a pilot grant program to support career and technical education exploration programs in middle schools and high schools; to the Committee on Health, Education, Labor, and Pensions.

By Mr. UDALL of Colorado (for himself, Mr. MANCHIN, Mr. BEGICH, Mrs. MCCASKILL, Ms. HEITKAMP, and Mr. TESTER):

S.J. Res. 20. A joint resolution proposing a balanced budget amendment to the Constitution of the United States; to the Committee on the Judiciary.

## ADDITIONAL COSPONSORS

S. 264

At the request of Ms. STABENOW, the name of the Senator from Connecticut (Mr. MURPHY) was added as a cosponsor of S. 264, a bill to expand access to community mental health centers and improve the quality of mental health care for all Americans.

S. 360

At the request of Mr. UDALL of New Mexico, the name of the Senator from Colorado (Mr. BENNET) was added as a cosponsor of S. 360, a bill to amend the Public Lands Corps Act of 1993 to expand the authorization of the Secretaries of Agriculture, Commerce, and the Interior to provide service opportunities for young Americans; help restore the nation's natural, cultural, historic, archaeological, recreational and scenic resources; train a new generation of public land managers and enthusiasts; and promote the value of public service.

S. 411

At the request of Mr. ROCKEFELLER, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 411, a bill to amend the Internal Revenue Code of 1986 to extend and modify the railroad track maintenance credit.

At the request of Mr. CRAPO, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 411, *supra*.

S. 522

At the request of Mr. DURBIN, the name of the Senator from Connecticut (Mr. MURPHY) was added as a cosponsor of S. 522, a bill to require the Secretary of Veterans Affairs to award grants to establish, or expand upon, master's degree or doctoral degree programs in orthotics and prosthetics, and for other purposes.

S. 526

At the request of Mr. BAUCUS, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 526, a bill to amend the Internal Revenue Code of 1986 to make permanent the special rule for contributions of qualified conservation contributions, and for other purposes.

S. 557

At the request of Mrs. HAGAN, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 557, a bill to amend title XVIII of the Social Security Act to improve access to medication therapy management under part D of the Medicare program.

S. 569

At the request of Mr. BROWN, the name of the Senator from Maine (Mr. KING) was added as a cosponsor of S. 569, a bill to amend title XVIII of the Social Security Act to count a period of receipt of outpatient observation services in a hospital toward satisfying the 3-day inpatient hospital requirement for coverage of skilled nursing facility services under Medicare.

S. 607

At the request of Mr. LEAHY, the name of the Senator from Colorado (Mr. UDALL) was added as a cosponsor of S. 607, a bill to improve the provisions relating to the privacy of electronic communications.

S. 734

At the request of Mr. NELSON, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 734, a bill to amend title 10, United States Code, to repeal the requirement for reduction of survivor annuities under the Survivor Benefit Plan by veterans' dependency and indemnity compensation.

S. 783

At the request of Mr. WYDEN, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 783, a bill to amend the Helium Act to improve helium stewardship, and for other purposes.

S. 888

At the request of Mr. JOHANNIS, the name of the Senator from North Dakota (Mr. HOEVEN) was added as a cosponsor of S. 888, a bill to provide end user exemptions from certain provisions of the Commodity Exchange Act and the Securities Exchange Act of 1934.

S. 909

At the request of Mr. REED, the name of the Senator from Missouri (Mrs. MCCASKILL) was added as a cosponsor of S. 909, a bill to amend the Federal Direct Loan Program under the Higher Education Act of 1965 to provide for student loan affordability, and for other purposes.

S. 1064

At the request of Mr. BROWN, the name of the Senator from Maine (Mr. KING) was added as a cosponsor of S. 1064, a bill to amend title XVIII of the Social Security Act to provide for treatment of clinical psychologists as physicians for purposes of furnishing clinical psychologist services under the Medicare program.

S. 1123

At the request of Mr. JOHANNIS, his name was added as a cosponsor of S. 1123, a bill to amend titles XVIII and XIX of the Social Security Act to curb waste, fraud, and abuse in the Medicare and Medicaid programs.

S. 1171

At the request of Mrs. FISCHER, her name was added as a cosponsor of S. 1171, a bill to amend the Controlled Substances Act to allow a veterinarian to transport and dispense controlled substances in the usual course of veterinary practice outside of the registered location.

S. 1174

At the request of Mr. BLUMENTHAL, the name of the Senator from Pennsylvania (Mr. TOOMEY) was added as a cosponsor of S. 1174, a bill to award a Congressional Gold Medal to the 65th Infantry Regiment, known as the Borinqueneers.

S. 1211

At the request of Mrs. BOXER, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1211, a bill to amend title 38, United States Code, to prohibit the use of the phrases GI Bill and Post-9/11 GI Bill to give a false impression of approval or endorsement by the Department of Veterans Affairs.

S. 1238

At the request of Mr. REED, the name of the Senator from Colorado (Mr. UDALL) was added as a cosponsor of S. 1238, a bill to amend the Higher Education Act of 1965 to extend the current reduced interest rate for undergraduate Federal Direct Stafford Loans for 1 year, to modify required distribution rules for pension plans, and for other purposes.

S. 1274

At the request of Mr. CHIESA, his name was added as a cosponsor of S. 1274, a bill to extend assistance to certain private nonprofit facilities following a disaster, and for other purposes.

S. 1276

At the request of Mr. NELSON, his name was added as a cosponsor of S. 1276, a bill to increase oversight of the Revolving Fund of the Office of Personnel Management, strengthen the authority to terminate or debar employees and contractors involved in misconduct affecting the integrity of security clearance background investigations, enhance transparency regarding the criteria utilized by Federal departments and agencies to determine when a security clearance is required, and for other purposes.

S. RES. 157

At the request of Ms. KLOBUCHAR, the name of the Senator from North Dakota (Mr. HOEVEN) was added as a cosponsor of S. Res. 157, a resolution expressing the sense of the Senate that telephone service must be improved in rural areas of the United States and that no entity may unreasonably discriminate against telephone users in those areas.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. WARREN (for herself, Mr. MCCAIN, Ms. CANTWELL, and Mr. KING):

S. 1282. A bill to reduce risks to the financial system by limiting banks' ability to engage in certain risky activities and limiting conflicts of interest, to reinstate certain Glass-Steagall Act protections that were repealed by the Gramm-Leach-Bliley Act, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. MCCAIN. I am pleased to join my colleagues, Senator WARREN of Massachusetts, Senator CANTWELL of Washington, and Senator KING of Maine, and also recognize the hard work of my friend from Ohio who has been heavily involved in this issue in the past.

This legislation is bipartisan. The 21st Century Glass-Steagall Act, which will restore the much needed wall between investment and commercial banking to lessen risk, restore confidence in our banking system, and better protect the American taxpayer. The original 1933 Glass-Steagall Act was put in place to respond to the financial crash of 1929.

Similar to the 21st Century Glass-Steagall Act that we are introducing today, it put up a wall between commercial and investment banking with the idea of separating riskier investment banking from the core banking functions such as checking and savings accounts that Americans need in their everyday life.

Commercial banks traditionally use their customer's deposit for the purpose of Main Street loans within their communities. They did not engage in high-risk ventures. Investment banks, however, managed money for those who could afford to take bigger risks in order to get a bigger return and who bore their own losses. Unfortunately, core provisions of the Glass-Steagall Act were repealed in 1999, shattering the wall dividing commercial banks and investment banks. Since that time, we have seen a culture of greed and excessive risk-taking take root in the banking world, where common sense and caution with other people's money no longer matters.

When these two worlds collided, the investment bank culture prevailed, cutting off the credit lifeline of Main Street firms, demanding greater returns that were achievable only through high leverage and huge risk-taking, which ultimately left the taxpayer with the fallout.

Leading up to the 2008 financial crisis, the mantra of "bigger is better" took over, and sadly it still remains. The path forward focused on short-term gains rather than long-term planning. Banks became overleveraged in their haste to keep in the race. The more they lent, the more they made.

Aggressive mortgages were underwritten for unqualified individuals who became homeowners saddled with loans they could not afford. Banks turned right around and bought portfolios of these shaky loans. I know the 2008 financial crisis did not happen solely because the wall of Glass-Steagall was knocked down. But I strongly believe the repeal of these core provisions played a significant role in changing the banking system in negative ways that contributed greatly to the 2008 financial crisis.

I believe this culture of risky behavior is still in play. For example, the Senate Permanent Subcommittee on Investigations, on which I serve as ranking member, held a hearing in March of this year to discuss the findings of the subcommittee investigation report entitled, "JPMorgan Chase Whale Trades: A Case History of Derivatives Risks and Abuses."

The hearing and the findings of the investigation described how traders at

JPMorgan Chase made risky bets using excess deposits that were partially insured by the Federal Government. If they wanted to make these bets on deposits and money that was not insured by the Federal Government, the Senator from Massachusetts and I would not be here today.

They used federally insured deposits, putting the taxpayers on the hook for their risky and ultimately failed investments. I say again, the Dodd-Frank bill, the whole purpose of it, as sold to this Congress and to the American people, was to ensure that no investment company or investment financial enterprise would ever be too big to fail again.

Is there anybody who believes these institutions such as I just talked about, JPMorgan Chase and others, are not too big to fail? Of course they are still too big to fail. The investigation revealed startling failures and shed light on a complex and volatile world of synthetic credit derivatives.

In a matter of months, JPMorgan Chase was able to vastly increase its exposure to risk while dodging oversight by Federal regulators. The trades ultimately cost the bank a staggering \$6.2 billion in loss. This case represents another shameful demonstration of a bank engaged in wildly risky behavior. The London Whale incident matters to the Federal Government and the American taxpayer because the traders at JPMorgan Chase were making risky bets using excess deposits, a portion of which were federally insured.

These excess deposits should have been used to provide loans for Main Street businesses. Instead, JPMorgan Chase used the money to bet on catastrophic risk. The 21st Century Glass-Steagall Act will return banking back to the basics by separating traditional banks that offer savings and checking accounts and are insured by the Federal Deposit Insurance Corporation from riskier financial institutions that offer other services such as investment banking, insurance, swaps dealing and hedge fund and private equity activities.

I believe big Wall Street institutions should be free to engage in transactions with significant risk but not with federally insured deposits. The bill also addresses depository institutions' use of products that did not exist when Glass-Steagall was originally passed, such as structured and synthetic financial products, including complex derivatives and swaps.

Finally, the bill provides financial institutions with a 5-year transition period to separate their activities. Many prominent individuals in the banking world support returning to a modern day Glass-Steagall banking system, including FDIC Vice Chairman Thomas Hoenig. Last year in his opinion piece in the Wall Street Journal, entitled "No More Welfare For Banks. The FDIC and the taxpayer are the underwriters of too much private risk taking," he lays out his plan to

strengthen the U.S. financial system by simplifying its structure and making its institutions more accountable for their mistakes, which he calls Glass-Steagall for today. He ends his piece by stating:

Capitalism will always have crises and the recent crisis had many contributing factors. However, the direct and indirect expansion of the safety net to cover an ever-increasing number of complex and risky activities made this crisis significantly worse. We have yet to correct the error. It is time we did.

I could not agree more. Almost 3 years ago, Congress passed Dodd-Frank with the intent to overhaul our Nation's financial system. I did not vote for Dodd-Frank because it did little if anything to tackle the tough problems facing our financial sector.

What Dodd-Frank did, though, was create thousands of pages of new and complicated rules. Is there any Member of this body who believes that Dodd-Frank has resulted in the end of too big to fail? The 21st Century Glass-Steagall Act may not end too big to fail on its own, but it moves the large financial institutions in the right direction, making them smaller and safer.

This bill would rebuild the wall between commercial and investment banking that was successful for over 60 years and reduced risk for the American taxpayer.

I ask unanimous consent that the Thomas Hoenig article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[FROM THE WALL STREET JOURNAL, June 10, 2012]

#### NO MORE WELFARE FOR BANKS

THE FDIC AND THE TAXPAYER ARE THE UNDERWRITERS OF TOO MUCH PRIVATE RISK TAKING.

(By Thomas Hoenig)

I have a proposal to strengthen the U.S. financial system by simplifying its structure and making its institutions more accountable for their mistakes. Put simply, my proposal would help prevent another 2008-style crisis by prohibiting banking organizations from conducting broker-dealer or other trading activities and by reforming money-market funds and the market for short-term collateralized loans (repurchase agreements, or repos). In other words, Glass-Steagall for today.

Those opposed to taking these actions generally focus on two themes. First, they say that if Glass-Steagall—enacted in 1933 to separate commercial and investment banking—had been in place, the crisis still would have occurred. Second, they argue that requiring the separation of commercial banking and broker-dealer activities is inconsistent with a free-market economy and puts U.S. financial firms at a global competitive disadvantage. Both assertions are wrong.

Advocates of the first argument say the crisis was not precipitated by trading activities within banking organizations but by excessive mortgage lending by commercial banks and by the failures of independent broker-dealers, such as Lehman Brothers and Bear Stearns.

This assertion ignores that the largest bank holding companies and broker-dealers were engaged in high-risk activities supported by explicit and implied government

guarantees. Access to insured deposits or money-market funds and repos fueled the activities of both groups, making them susceptible to the freezing of markets and asset-price declines.

Before 1999, U.S. banking law kept banks, which are protected by a public safety net (e.g., deposit insurance), separate from broker-dealer activities, including trading and market making. However, in 1999 the law changed to permit bank holding companies to expand their activities to trading and other business lines. Similarly, broker-dealers like Bear Stearns, Lehman Brothers, Goldman Sachs and other "shadow banks" were able to use money-market funds and repos to assume a role similar to that of banks, funding long-term asset purchases with the equivalent of very short-term deposits. All were able to expand the size and complexity of their balance sheets.

While these changes took place, it also became evident that large, complex institutions were considered too important to the economy to be allowed to fail. A safety net was extended beyond commercial banks to bank holding companies and broker-dealers. In the end, nobody—not managements, the market or regulators—could adequately assess and control the risks of these firms. When they foundered, banking organizations and broker-dealers inflicted enormous damage on the economy, and both received government bailouts.

To illustrate my point, consider that if you or I want to speculate on the market, we must risk our own wealth. If we think the price of an asset is going to decline, we might sell it "short," expecting to profit by buying it back more cheaply later and pocketing the difference. But if the price increases, we either invest more of our own money to cover the difference or we lose the original investment.

In contrast, a bank can readily cover its position using insured deposits or by borrowing from the Federal Reserve. Large nonbank institutions can access money-market funds or other credit because the market believes they will be bailed out. Both types of companies can even double down in an effort to stay in the game long enough to win the bet, which supersedes losses when the bet doesn't pay off. The Federal Deposit Insurance Corporation (FDIC) fund and the taxpayer are the underwriters of this private risk-taking.

This leads to the second criticism of my proposal—that breaking up the banks is inconsistent with free markets and our need to be competitive globally. The opposite is true. My proposal seeks to return to capitalism by confining the government's guarantee to that for which it was intended—to protect the payments system and related activities inside commercial banking. It ends the extension of the safety net's subsidy to trading, market-making and hedge-fund activities. This change will invigorate commercial banking and the broker-dealer market by encouraging more equitable and responsible competition within markets. It reduces the welfare nature of our current financial system, making it more self-reliant and more internationally competitive.

Capitalism will always have crises and the recent crisis had many contributing factors. However, the direct and indirect expansion of the safety net to cover an ever-increasing number of complex and risky activities made this crisis significantly worse. We have yet to correct the error. It is time we did.

Mr. MCCAIN. I would like to thank the Senator from Massachusetts, whom I will freely admit has a great deal more knowledge, background, and expertise on this issue than I do. I appre-

ciate her leadership. When the Senator sought to join us in the Senate, she committed to the people of Massachusetts and this country that she would be committed to certain significant reforms to ensure that we never again have the kind of crisis that devastated my State.

Still today, nearly half the homes in my State are underwater, which means they are worth less than their mortgage payments, while Wall Street has been doing well for years. That bailout is one of the more unfair aspects that I have seen in American history. We cannot revisit or fix history, but we sure can make sure we have made every effort to make sure these large financial institutions do not gamble with taxpayers' money.

I thank the Senator from Massachusetts. It is a pleasure to join her in this effort as her junior partner.

I yield the floor.

The PRESIDING OFFICER (Mr. BROWN). The Senator from Massachusetts.

Ms. WARREN. Mr. President, I rise in support of the senior Senator from Arizona and to support the 21st Century Glass-Steagall Act. I am honored to join Senators MCCAIN, CANTWELL, and KING in introducing this bill. I particularly commend Senator MCCAIN for his hard work and his long-time dedication on this issue.

Senator MCCAIN is a real leader in the Senate. While we do not agree on every issue, he is a fighter who stands for what he believes. Senator MCCAIN has worked hard to shed light on the too-big-to-fail problem. He has been thinking about how to bring back elements of Glass-Steagall for years. I am proud to join with him to speak about the 21st Century Glass-Steagall Act. I am glad to be his partner in this endeavor.

Washington is a partisan place. This Congress has its share of partisan bills. But we have all joined together today because we want a safe future for our kids and for our grandkids. We know that 5 years ago Wall Street's high-risk bets nearly brought our economy to its knees, disrupting the lives and livelihoods of hard-working Americans.

We know the economic downturn did not affect just Democrats or just Republicans or just Independents, it affected everyone.

Over the past 5 years we have made some real progress in dialing back the risk of future crises. But despite the progress that has been made, the biggest banks continue to threaten the economy. The four biggest banks are now 30 percent larger than they were just 5 years ago. They have continued to engage in dangerous high-risk practices that could once again put our economy at risk.

The big banks were not always allowed to take on big risk while enjoying the benefits of both explicit and implicit taxpayer guarantees. Four years after the 1929 crash, Congress passed the Banking Act, or the Glass-

Steagall Act as it is known, which is best known for separating the risky activities of investment banks from the core depository functions such as savings accounts and checking accounts that consumers rely on every day.

For years, Glass-Steagall played a central role in keeping our country safe. Traditional banking stayed separate from high-risk Wall Street banking. But big banks wanted the higher profits they could get from taking on more risk. Investors wanted access to the insured deposits of traditional banks. So Wall Street investors combined with the big banks to try to weaken and repeal Glass-Steagall. Starting in the 1980s, regulators at the Federal Reserve and the Office of the Comptroller of the Currency responded, reinterpreting longstanding legal terms in ways that slowly broke down the wall between investment banking and depository banking. Finally, after 12 attempts to repeal, Congress eliminated the core provisions of Glass-Steagall in 1999.

The 21st Century Glass-Steagall Act will reestablish the wall between commercial and investment banking, make our financial system more stable and more secure, and protect American families.

Like its 1933 predecessor, the 21st Century Glass-Steagall Act will separate traditional banks that offer checking and savings accounts and are insured by the FDIC from the riskier financial services. It will return banking—basic banking—to the basics.

The 21st Century Glass-Steagall Act also puts in place some important improvements over the original Glass-Steagall. It reverses the interpretations the regulators used to weaken the original Glass-Steagall. Our bill also recognizes that financial markets have become more complicated since the 1930s, and it separates depository institutions from products that did not exist when Glass-Steagall was originally passed, such as structured and synthetic financial products, including complex derivatives and swaps.

The idea behind the bill is simple: Banking should be boring. Anyone who wants to take big risks should go to Wall Street, and they should stay away from the basic banking system.

I wish to be clear—the 21st Century Glass-Steagall Act will not by itself end too big to fail and implicit government subsidies, but it will make financial institutions smaller, safer, and move us in the right direction. By separating depository institutions from riskier activities, large financial institutions will shrink in size and won't be able to rely on Federal depository insurance as a safety net for their high-risk activities. It will stop the game these banks have played for too long. Heads, the big banks win and take all the profits and, tails, the taxpayer gets stuck with all the losses.

I ask my colleagues to join me in supporting this legislation to reduce the risk in the financial system and to

dial back the likelihood of future crises.

Exactly 70 years ago the halls of the Senate filled with excitement and history when it passed the original Glass-Steagall. The financial industry at that time experienced some big immediate changes, but despite all kinds of claims to the contrary, Wall Street survived and the sky did not fall. In fact, the American people enjoyed a half century of financial stability and a strong, growing middle class. The regular financial crises that had occurred over and over before Glass-Steagall faded away, and our economy became stronger and more stable.

Few in Congress have been around long enough to have lived through the Great Depression that led to the first Glass-Steagall, but we were all around during the 2008 financial crisis. It has been 5 years since then, but our economy still has not fully recovered, and the downturn has had an impact everywhere—on our families, businesses, retirees, workers, schoolchildren, and college students. We need a banking system that serves the best interests of the American people, not just the few at the top. The 21st Century Glass-Steagall Act is an important step in the right direction. I ask my colleagues to join me in supporting this measure.

By Mr. ROCKEFELLER (for himself, Mr. WHITEHOUSE, and Mr. FRANKEN):

S. 1286. A bill to encourage the adoption and use of certified electronic health record technology by safety net providers and clinics; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, I rise today to introduce the Medicaid Information Technology to Enhance Community Health Act of 2013, or the MITECH Act. I am proud to be joined by my colleagues Senator FRANKEN and Senator WHITEHOUSE in introducing this important piece of legislation which would help clinics and health care providers serving our Nation's most vulnerable citizens qualify for incentives to adopt meaningful use electronic health records for their patients.

In recent years, Congress has recognized the benefits of implementing electronic health records in our health care system. Countless experts have determined that electronic health records and other forms of health information technology improve health care quality, reduce medical errors, and lower overall medical costs. We have made unprecedented investments in electronic health records and have seen the benefits of these investments. Since its implementation, these programs have helped hundreds of thousands of providers and hospitals nationwide establish and effectively use electronic health records. However, eligibility requirements for these incentives payments have prevented some low-income providers from receiving them.

While electronic health records are a vital part of any quality health prac-

tice, they are in some ways even more important for clinics that serve low income, uninsured, and underinsured populations. These patients often seek services from any number of settings rather than returning to a set primary care provider. When the clinics that serve a particular population are able to establish and maintain electronic health records for their patients, it is far more likely that a patient's record will be available to their health care providers even if the patient is seeing a different provider in a different clinic. This allows an individual's health care providers to have access to a complete medical history, improving their ability to form a diagnosis, preventing unnecessary duplication of tests, and reducing costs for the patients and government. This measure also will allow safety net clinics to better communicate with patients about necessary screenings and help to make sure patients are taking medications as prescribed and not "doctor shopping" for inappropriate medication.

The Health Information Technology for Economic and Clinical Health, HITECH, Act created financial incentives called "meaningful use" incentives for both Medicare and Medicaid providers to adopt and meaningfully use implement and support electronic health records. While the current program has helped thousands of providers, practices, and hospitals nationwide, many safety net providers and clinics have not been able to benefit from the incentives. Given that Medicaid eligibility levels are so low in many states, it is difficult for many safety net providers to meet the 30 percent Medicaid patient threshold required to participate in the Medicaid electronic health records incentive program even though their patients are predominately low-income.

Congress addressed this problem only for practitioners working in Federally-qualified health centers and rural health centers by creating a 30 percent "needy" threshold in the HITECH Act for those providers. Unfortunately, the law failed to provide similar support for other providers serving low-income individuals.

The MITECH Act of 2013 seeks to eliminate these barriers, which prevent many safety net providers from qualifying for Medicaid electronic health record incentive payments. The bill will improve access to incentives for safety net providers that were left out of the HITECH Act's efforts. Additionally, the MITECH Act requires the Secretary of Health and Human Services to develop a methodology to allow these safety net clinics to be eligible for payments as an entity, similar to the current process that exists for hospitals.

Access to Medicaid electronic health records incentives will allow safety net clinics to better communicate with patients about necessary screenings, help ensure compliance with prescription drugs, reduce unnecessary duplication

of tests and will strengthen the safety net which provides essential care to so many Americans.

I urge my colleagues to support this bill. In doing so, we will offer vital support to safety net providers.

By Mr. REED (for himself, Mr. COONS, and Mr. WHITEHOUSE):

S. 1291. A bill to strengthen families' engagement in the education of their children; to the Committee on Health, Education, Labor, and Pensions.

Mr. REED. Mr. President, today I introduce the Family Engagement in Education Act with my colleagues Senator COONS and Senator WHITEHOUSE. I thank Representative THOMPSON for introducing the House companion of this bipartisan bill.

Our legislation will strengthen family engagement in education at the local, state, and national levels. It will empower parents by increasing school district resources dedicated to family engagement activities from one percent to 2 percent of the district's Title I allocation. It will also improve the quality of family engagement practices at the school level by requiring school districts to develop and implement standards-based policies and practices for family-school partnerships. It will build State and local capacity for effective family engagement in education by setting aside at least 0.3 percent of the State Title I allocation for statewide family engagement in education activities, such as establishing statewide family engagement centers to continue and enhance the work that had been supported through the Parent Information Resource Centers. For states with Title I-A allocations above \$60 million, the State Educational agency will make grants to at least one local family engagement in education center to provide innovative programming and services, such as leadership training and family literacy, to local families and to remove barriers to family engagement, and to support State-level activities in the highest need areas of the State. Finally, at the national level, our legislation will require the Secretary of Education the convene practitioners, researchers, and other experts in the field of family engagement in education to develop recommended metrics for measuring the quality and outcomes of family engagement in a child's education.

Research demonstrates that family engagement in a child's education increases student achievement, improves attendance, and reduces dropout rates. A study by Anne Seitsinger and Steven Brand at the University of Rhode Island's Center for School Improvement and Educational Policy found that students whose parents support their education through learning activities at home and discuss the importance of education perform better in school. Yet too often, family engagement is not built into our school improvement efforts in a systematic way. The Family Engagement in Education Act will promote meaningful family engagement

policies and programs at the national, state, and local levels to ensure that all students are on track to be career and college-ready.

This legislation builds on my successful efforts in the last reauthorization of the Elementary and Secondary Education Act, ESEA, the 2001 No Child Left Behind Act, to incorporate provisions throughout the law to strengthen and boost parental involvement. It is also in line with the administration's blueprint for the ESEA reauthorization, which calls for doubling the amount that school districts are required to set aside for parental involvement and encouraging states to use some of their Title I funding to support local family engagement centers in education.

Developed with the National Family, School, and Community Engagement Working Group, which includes organizations such as National PTA, United Way Worldwide, Harvard Family Research Project, and National Council of La Raza, and endorsed by hundreds of local, state, and national organizations, this legislation represents the broad consensus that we must do a better job of engaging families in all aspects of their children's education.

I urge my colleagues to cosponsor the Family Engagement in Education Act, and to work for its inclusion in the forthcoming debate to reauthorize and renew the Elementary and Secondary Education Act.

#### NOTICES OF HEARINGS

##### COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. HARKIN. Mr. President, I wish to announce that the Committee on Health, Education, Labor, and Pensions will meet in open session on Tuesday, July 16, 2013, at 2:30 p.m. in room 430 of the Dirksen Senate Office Building to conduct a hearing entitled "Pooled Retirement Plans: Closing the Retirement Plan Coverage Gap for Small Businesses."

For further information regarding this meeting, please contact Sarah Cupp of the committee staff on (202) 224-5441.

##### COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. WYDEN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Senate Committee on Energy and Natural Resources. The hearing will be held on Thursday, July 18, 2013, at 9:30 a.m., in room 366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive testimony on the current state of clean energy finance in the United States and opportunities to facilitate greater investment in domestic clean energy technology development and deployment.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those

wishing to submit written testimony for the hearing record may do so by sending it to the Committee on Energy and Natural Resources, United States Senate, Washington, D.C. 20510-6150, or by e-mail to [danielle\\_deraney@energy.senate.gov](mailto:danielle_deraney@energy.senate.gov).

For further information, please contact Kevin Rennert at (202) 224-7826 or Danielle Deraney at (202) 224-1219.

##### COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. WYDEN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Senate Committee on Energy and Natural Resources. The hearing will be held on Tuesday, July 23, 2013, at 2:30 p.m., in room SD-366 of the Dirksen Senate Office Building.

The purpose of this hearing is to consider S. 1273, the FAIR Act of 2013.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record may do so by sending it to the Committee on Energy and Natural Resources, United States Senate, Washington, D.C. 20510-6150, or by e-mail to [Laur-en\\_Goldschmidt@energy.senate.gov](mailto:Laur-en_Goldschmidt@energy.senate.gov).

For further information, please contact Todd Wooten at (202) 224-3907 or Lauren Goldschmidt at (202) 224-5488.

#### AUTHORITY FOR COMMITTEES TO MEET

##### COMMITTEE ON ARMED SERVICES

Mr. UDALL of New Mexico. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on July 11, 2013, at 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. UDALL of New Mexico. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on July 11, 2013, at 11 a.m. to conduct a hearing entitled "Mitigating Systemic Risk Through Wall Street Reforms."

The PRESIDING OFFICER. Without objection, it is so ordered.

##### COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. UDALL of New Mexico. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on July 11, 2013, at 9:30 a.m., in room 366 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### COMMITTEE ON FOREIGN RELATIONS

Mr. UDALL of New Mexico. Mr. President, I ask unanimous consent

that the Committee on Foreign Relations be authorized to meet during the session of the Senate on July 11, 2013, at 10 a.m., to hold a hearing entitled, "Assessing the Transition in Afghanistan."

The PRESIDING OFFICER. Without objection, it is so ordered.

##### COMMITTEE ON FOREIGN RELATIONS

Mr. UDALL of New Mexico. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on July 11, 2013, at 2:15 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### COMMITTEE ON THE JUDICIARY

Mr. UDALL of New Mexico. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on July 11, 2013, at 11 a.m., in SD-226 of the Dirksen Senate Office Building, to conduct an executive business meeting.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### SELECT COMMITTEE ON INTELLIGENCE

Mr. UDALL of New Mexico. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on July 11, 2013, at 2:30 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### PRIVILEGES OF THE FLOOR

Mr. MERKLEY. Mr. President, I ask unanimous consent that my intern, Chris Riegg, be granted privileges of the floor for the balance of the day.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### KAY BAILEY HUTCHISON SPOUSAL IRA

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Finance be discharged from further consideration of H.R. 2289 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2289) to rename section 219(c) of the Internal Revenue Code of 1986 as the Kay Bailey Hutchison Spousal IRA.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. I ask unanimous consent that the bill be read a third time and passed and the motion to reconsider be made and laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 2289) was ordered to a third reading, was read the third time, and passed.



# AUTHORIZING THE USE OF EMANCIPATION HALL

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to H. Con. Res. 43, which was received from the House and is at the desk.

The PRESIDING OFFICER.

The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 43) authorizing the use of Emancipation Hall in the Capitol Visitor Center for a ceremony honoring the life and legacy of Nelson Mandela on the occasion of the 95th anniversary of his birth.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. I ask unanimous consent that the concurrent resolution be agreed to and the motion to reconsider be laid upon the table.

The concurrent resolution (H. Con. Res. 43) was agreed to.

# NATIONAL DAY OF THE AMERICAN COWBOY

Mr. REID. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration and the Senate now proceed to S. Res. 191.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 191) designating July 27, 2013, as "National Day of the American Cowboy."

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions

to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 191) was agreed to.

The preamble was agreed to.

(The resolution, with its preamble, is printed in the RECORD of June 27, 2013, under "Submitted Resolutions.")

# MEASURE READ THE FIRST TIME—S. 1292

Mr. REID. I am told that there is a bill at the desk due for its first reading.

The PRESIDING OFFICER. The clerk will read the bill by title.

The legislative clerk read as follows:

A bill (S. 1292) to prohibit the funding of the Patient Protection and Affordable Care Act.

Mr. REID. I ask for a second reading, and in order to place the bill on the calendar under the provisions of rule XIV, I object to my own request.

The PRESIDING OFFICER. Objection having been heard, the bill will be read for a second time on the next legislative day.

# ORDER OF PROCEDURE

Mr. REID. I ask unanimous consent the mandatory quorum under rule XXII be waived for three of the cloture motions filed earlier today.

The PRESIDING OFFICER. Without objection, it is so ordered.

# ORDERS FOR MONDAY, JULY 15, 2013

Mr. REID. I now ask unanimous consent that when the Senate completes

its business today, it adjourn until 2 p.m. on Monday, July 15, 2013; that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day; that the majority leader be recognized; and following the remarks of the two leaders, the time until 5:30 p.m. be divided equally between the two leaders or their designees, with Senators permitted during that time to speak for up to 10 minutes; further, that at 5:30 p.m. I be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered.

# PROGRAM

Mr. REID. Mr. President, then there will be a rollcall vote at 5:30 p.m. on Monday. There will also be an all-Senators joint caucus at 6 p.m. on Monday in the Old Senate Chamber.

# ADJOURNMENT UNTIL MONDAY, JULY 15, 2013, AT 2 P.M.

Mr. REID. I ask unanimous consent the Senate stand adjourned under the previous order.

There being no objection, the Senate, at 6:50 p.m., adjourned until Monday, July 15, 2013, at 2 p.m.

# NOMINATIONS

Executive nomination received by the Senate:

# THE JUDICIARY

WILLIAM WARD NOOTER, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FOR THE TERM OF FIFTEEN YEARS, VICE A. FRANKLIN BURGESS, RETIRING.